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## Current Topics.

### A Legal Family.

THAT JUDICIAL blood flows in the veins of certain families is shown once again by the appointment of Mr. ARTHUR LIONEL BRUCE THESIGER, to a County Court Judgeship, a post for which he has all the necessary qualifications. The founder of the judicial dynasty was FREDERICK THESIGER, who started as a midshipman in the Navy, in which capacity he took part in the Copenhagen expedition of 1807, but exchanging the sea for the law he was called to the Bar and eventually became Solicitor-General, Attorney-General and Lord Chancellor in Lord DERBY'S ministries of 1858 and 1866, with the title Lord CHELMSFORD. Whether he was a great Chancellor or not was a good deal discussed when he was passed over by DISRAELI on forming his administration in 1868, in favour of Lord CAIRNS, but, according to Viscount SUMNER, his judgments in the House of Lords showed sound sense and grasp of principle. That he had a pretty wit was generally known, and an instance of a felicitous *mot* of his may be recalled. On one occasion in the House of Lords the prelate who should have read the prayers not having arrived at the prescribed hour, the Lord Chancellor proceeded to perform the ceremony. Scarcely had the service begun when the defaulting bishop arrived breathless, but was, of course, too late. After prayers were over and the Chancellor was preparing to note the occurrence according to custom, the bishop hastened up to the table with the petulant protest: "I think your lordship needn't have been in such a hurry; you might have given me a moment." "Oh, if that's all," rejoined the Chancellor, taking up his pen, "I'll make a *minute* of it." This witty old gentleman handed on his legal aptitudes to his second son, ALFRED HENRY THESIGER, who at the very early age of thirty-nine was promoted direct from the Bar to the Court of Appeal. At once he justified his appointment, but within three years came "th' abhorred shears and slit the thin-spun life"; he died in 1880, by his death making a notable gap in the ranks of our judges. The new County Court Judge is a grandson of Lord Chancellor CHELMSFORD.

### Taking a Note.

OF THE cases which in due course reach the Court of Appeal, it is surprising to find that in a considerable number of them the tribunal is without that guidance regarding what happened in the court below, in the shape of a full note of the evidence or note of the judgment, to enable it to do full justice to the arguments. This, it is true, does not happen where the litigants are sufficiently substantial from the monetary point of view as to be able to provide a complete transcript of both the evidence and judgment; but all litigants are not in this fortunate position, and, consequently, in their cases the court must look elsewhere than to a shorthand note for the information it requires. In several appeals lately Lord Justice SCRUTTON has had to remind junior counsel that it is part of their duty to take a note of the evidence and of the judgment. Apparently this part of their functions is very often forgotten, with, at times, disastrous consequences to their clients. Not long ago one counsel, on being reminded of this, replied that at the Irish Bar where he began his professional career, it was not the practice for counsel to take a full note, presumably because the sensible plan was followed of having a stenographic transcript always available, as we believe it also is in Scotland: and the same counsel added that at least on one occasion Sir CHARLES RUSSELL sternly rebuked his junior for laboriously taking a note of the evidence instead of watching the demeanour of the witness. Some day, perhaps, it will be deemed essential that there should be a shorthand writer attached to each court so that the possibility of any miscarriage of justice through the absence of sufficient material upon which the Court of Appeal can properly adjudicate may be avoided. That there is a certain dislike of shorthand transcripts on the part of some judges is intelligible enough, for it may, and oftentime does, involve reading a great deal more than is really essential, but, after all, this is a small drawback and one worth overcoming in order to have a complete picture of the case.

### The Statutory Power of Advancement.

THE DECISION in *In re Stimpson* (W.N., 28th February) is the first authoritative interpretation of s. 32 of the Trustee Act, 1925, which confers upon trustees of personalty settlements, including wills, a statutory power of advancement out of capital for the benefit of any person entitled, whether absolutely or contingently, to the capital of the trust property or any share in it. By sub-s. (2) the operation of the section is to be limited to cases where the property consists of money or securities or property held upon trust for sale, and not by statute or in equity considered as land or applicable as capital money for the purposes of the Settled Land Act, 1925. A doubt has been suggested by the learned editors of "Wolstenholme and Cherry's Conveyancing Statutes," whether the section is applicable to money arising under a trust for sale of land, as it is now possible in certain cases to treat such money as being "land": see Settled Land Act, 1925, s. 75 (5). LUXMOORE, J., held that the section was applicable to the ordinary case of land held in trust for sale, there being no statute or rule of equity which required him to hold that the proceeds of such sale ought to be regarded as land. The reference to money or securities which by statute are to be considered as land is probably explained by s. 78 of the

Settled Land Act, 1925, under which money or the proceeds of sale of any property directed to be held upon trusts declared by reference to capital money arising from settled land under the Act are to be held as if they had been or represented money which had actually arisen under the Act from settled land. Before the Act a mere direction that money was to be regarded as settled land, as distinguished from an imperative trust for investment, could not effect a conversion: *Re Walker* [1908] 2 Ch. 705, and other cases. The late Lord PARKER (then PARKER, J.) said in that case that the Legislature could, if it liked, turn money into land for the purposes of devolution, by an enactment to that effect, but the individual could only do so by creating an imperative trust for conversion. The Legislature has now done what Lord PARKER said it might do. But LUXMOORE, J., also decided on an earlier hearing of the summons, that if the tenant for life consented to the exercise of the power he would forfeit his life interest which he held upon protective trusts. The only case upon this point, apparently, is *Re Hodgson* [1913] 1 Ch. 34, where NEVILLE, J., held that a tenant for life did not forfeit his life interest by consenting to the exercise of an express power of advancement. In neither case were the usual words of exception "other than a consent to the exercise of a power of advancement" in the condition against assignment to be found, and it is rather difficult to see why they may not be implied for the purposes of a statutory power equally as well as for an express power. The statutory form of protective trust in s. 33 of the Trustee Act, 1925, adopts the exception in the words "other than an advance under any statutory or express power." The statutory power clearly contemplates that its exercise may prejudice a tenant for life by reducing his income, and therefore requires his consent, but forfeiture is an altogether different matter.

## The Curate's "Whitsun Offering."

THE "PARISH MAGAZINE" is one of those useful and generally harmless institutions that have never, so far as we know, played any particular part in the moulding of our English law. It has, however, been reserved for the parish magazine of St. Gabriel's, Bound's Green, to play a decisive part in a decision which is of consequence to some four or five thousand unbeneficed clergy on whom the congregations to whom they minister may be desirous of bestowing the proceeds of a church collection. In the case of *Slaney* (*Inspector of Taxes*) v. *The Rev. E. S. Starkey*, heard by Mr. Justice ROWLATT (vide *The Times* of 7th March) the learned judge held that the question of the curate's liability to pay income tax upon a sum of money presented to him at Whitsuntide was settled conclusively by the wording of an announcement in the parish magazine which solicited contributions to a collection to be taken in church for the respondent in appreciation of his "devoted and earnest ministry." This made the sum part of his remuneration, and entitled the Crown to succeed in an appeal against the decision of the Income Tax Commissioners to the opposite effect. It only shows how careful should be the editing even of a parish magazine. Apart from that the case was one of considerable legal interest, and we hope to publish an article dealing more fully with the case in an early issue.

## Annual Value for Rating Purposes.

THE DISMISSAL by the House of Lords [1931] W.N. 68, of an appeal from a judgment of the Court of Appeal in *Consett Iron Company Limited* v. *Durham County Assessment Committee for North-Western Area* (1930), 143 L.T. 4; 46 T.L.R. 223, illustrates the application of a well-established principle of rating law to property held on a mining lease out of which the colliery company could not hope to make a profit during the year of assessment. The basis of the assessment was "the rent at which"—in the words of the Parochial Assessment Act, 1836—"the same might reasonably be expected to let from year to year, free of all usual tenant's rates and taxes, and tithe commutation rent charge, if any, and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain them in a state to command such rent." The value of the premises was to be estimated in the light of the fact that a tenancy from year to year, though readily determinable at law, in fact frequently lasts for a considerable number of years. The colliery lessees must have acquired their interest in the premises on the assumption that trading conditions would improve so as to enable them to make a profit prior to the determination of the term, and consequently this profit-earning potentiality was a factor to be considered in estimating the rent commandable according to the requirements of the Act. The consideration underlying this decision, which at first sight may appear somewhat harsh, was brought out by COCKBURN, C.J., who said, in *Great Eastern Railway Company* v. *Haughley* (1866), L.R. 1 Q.B. 666: "I think it is one thing to start with the assumption that you are dealing with a tenancy from year to year, and another thing to say that the hypothetical tenant, in calculating what he can reasonably pay as rent for the premises, is necessarily to assume that his tenancy would not last beyond a year. I think the possibility of its longer duration is one of the surrounding circumstances which the tenant from year to year would take into account." In estimating the depreciation allowable in respect of railway rolling stock the arbitrator (substituted in that case for Quarter Sessions) took into consideration the length of its life and did not merely assess the difference between its value at the beginning and the end of the year. In both these cases the court refused to interfere on the ground that the relevant (and all the relevant) points of law had been duly taken into consideration, and that questions of fact were not subject-matter for appeal.

## Rebates for "Rum-Runners."

THE CASE of the *Carling Brewery Company of London, Ontario*, recently before the Privy Council, may be worth the attention of those who seek to diminish causes of friction between ourselves and friendly nations. The law of Canada allows certain excise rebates for liquor brewed in and exported from the Dominion. The brewery in question appears to have done a very large trade in sending its beer to the United States—thereby, of course, committing an offence against the law of that country, though not against the law, either of Canada or the British Empire. The rebates claimed on these exports amounted to no less a sum than £95,000. The Supreme Court of Canada decided that they were not allowable in the case of exports to a friendly nation which, under penalty, forbade beer to be imported. The Privy Council has now held that, notwithstanding the veto of the United States, the Canadian Government must allow the rebate. That Government can, and no doubt will, alter its excise law so as to exempt "rum-runners" from the favour accorded to ordinary exporters, but the decision that our law pays neither regard nor honour to the penal statutes of other nations, and even may reward those who violate them, may be regarded as unfortunate. If any neighbouring country put a premium on the packets of cocaine or indecent books its nationals could smuggle into this country, perhaps we might consider the matter in a different light. Our law was discussed in an article "A Rum-running Contract," 73 SOL. J. 293, in which we analysed a case somewhat difficult to reconcile with the present decision. The general situation may be commended to those concerned with international law at Geneva. Much has happened since Lord MANSFIELD decided in *Planché* v. *Fletcher* (1779), 1 Doug. 251, that the revenue laws of other countries are no concern of our own, and there is evidence, even apart from the poor opinion of the British Empire entertained by Mr. THOMSON, Mayor of Chicago, that our attitude in this matter is much resented. It may thus be suggested that our government, as an act of statesmanship, should bring in a Bill to provide that the export of goods to

friendly countries in violation of their laws should be an offence against our own—on the footing, of course, that the courtesy was reciprocal. Blockade running, to supply a nation with the goods it desires through a ring of enemy ships, would of course be on a different footing.

### Comment after Trial.

AFTER THE dismissal of the appeal of ALFRED ROUSE, convicted of murder, by the Court of Criminal Appeal, HEWART, L.C.J., is reported to have observed: "With reference to the case that has just been disposed of, there has been, pending the appeal, a great deal of improper comment in certain newspapers, and in letters to members of the court, including one letter from a person describing himself as a Member of Parliament. We shall have to consider whether proceedings of this kind, pending an appeal, do not constitute contempt of court." Since, up to the time of writing, no proceedings have been taken against anybody, it may perhaps be assumed that the matter will not be taken further. The question of fair comment after verdict and judgment, but when appeal is possible or actually pending, is of public interest. The general rule, reaffirmed in *Dunn* v. *Bevan* [1922] 1 Ch. 276, is that comment may freely be made, notwithstanding motion for a new trial, and, so far as such comment may be unfair on the parties to the case, their remedy lies, not in proceedings for contempt of court, but in an ordinary action for libel. In the case of *Dallas* v. *Ledger* (1888), 4 T.L.R. 432, the defendant, the editor of the *Era*, aggrieved by the verdict against him, applied for a new trial, and published an article reflecting on the perversity of the jury. The plaintiff applied for his committal for contempt. In dealing with the possibility of a new trial, STEPHEN, J., said: "If it was granted, a considerable time must elapse before the second trial, and then it was not probable that anyone who read the article would be on the jury, or would recollect or be influenced by it." Possibly this would not apply to a trial of great public interest, but it may be noted that the Court of Criminal Appeal cannot order a new trial, so no question of a new jury could arise. Presumably a judge's mind is uninfluenced by newspaper articles, though to write a private letter to him to influence his decision is certainly gross contempt of court (see *Re Sombre* (1849), 1 Mac. & G. 116, at p. 122), and probably so would any suggestion be as to the course he should adopt on appeal if publicly made in a newspaper article. It would be interesting to know the class of comment on the *Rouse Case* which the Lord Chief Justice considered improper, having regard to the appeal. It may be added that a case where a jury has disagreed is still regarded as *sub judice*, see *Re Labouchere*, 17 T.L.R. 578, and so are proceedings in petty sessions, which may result in committal: see *R.* v. *Parke* [1903] 2 K.B. 432, which arose on comments on the moral character of one DOUGAL, who murdered a Miss CAMILLA HOLLAND.

### Circumstantial Evidence.

IN HIS recent book, "Seven Murderers," Mr. CHRISTMAS HUMPHREYS deals with the popular criticism of circumstantial evidence by pointing out that but for its acceptance, many murders "of the foulest and most deliberate kind" would go unpunished. This argument strikes us as somewhat unworthy of author and occasion. The right to use an instrument for the purpose of establishing guilt must not depend on the nature of the crime which it is sought to prove, but on the merits of the instrument as a means of proof. The suggestion underlying such a remark as "only circumstantial evidence" is, as Mr. HUMPHREYS says, the suggestion that it is a less satisfactory means of proof than direct evidence. In comparing the two, it has, however, been pointed out that circumstances, unlike witnesses, cannot lie; and we should have thought that consideration should have directed to the question whether it is easier to judge the veracity of a man than to draw inferences from facts.

## Criminal Law and Practice.

WHAT IS A PLEA OF GUILTY?—Arising out of the observations on this subject, *ante* p. 163, a correspondent, who is a Clerk of the Peace, points out that s. 12 of the Criminal Justice Act, 1925, only specifically authorises justices to ask the accused (in an indictable offence not dealt with summarily) whether he wishes to say anything in answer to the charge, and that, where the accused has in fact admitted the truth of the charge to the police, the answer in nine cases out of ten is merely "No, sir." Further, that in response to an application to the Home Office as to whether examining justices were empowered to ask the accused whether he admits guilt or pleads guilty, the opinion was given that they were not entitled to do so. In support of this view it was pointed out to our correspondent that the Criminal Justice Bill as introduced into Parliament proposed that the examining justices should address the accused as follows: "Do you wish to say anything in answer to the charge [and do you plead guilty or not guilty]?" You are not obliged to say anything [in answer to either of these questions], unless you desire to do so, etc."; but the words within brackets were deleted in the course of the passage of the Bill through Parliament. The consequence of this omission is that grand jurors at quarter sessions are given an unnecessary amount of trouble and not infrequently called together simply to hear prisoners' statements to police officers admitting the offences charged in the indictments.

SPEED LIMITS.—It was stated in the press last week that the application for a special case on the question of a speed limit for motor cars in the Royal parks has been abandoned. We are not altogether surprised, although of course someone may yet be found who will, upon conviction, decide to take the matter to the High Court.

It was argued for the defence in the case at Bow-street that the Road Traffic Act had abolished the speed limit for ordinary private motor cars on all roads to which the public have access. The prosecution, apparently, replied that access in the Royal parks was limited, and that the Road Traffic Act, 1930, which did not bind the Crown, left that access limited as before, so that the roads through the Royal parks were not roads to which the public had access in the sense intended by the Act.

The learned magistrate convicted the defendant and agreed to state a case if application were made. He seems to have based his decision upon a perfectly simple and perfectly sound reason. The speed limit regulations for Royal parks were made, not under the repealed Motor Car Act, nor under the new Road Traffic Act, but under the Parks Regulations Acts, and he held that the power to make such regulations was not repealed, either expressly or by implication.

To put the matter in a slightly different way, but with the same result, we should suggest that it is not strictly correct to say that the Road Traffic Act allows private motor cars to travel without any limit of speed. What that Act did was to abolish the speed limit imposed by the Motor Car Act, and to substitute a section and a schedule imposing fresh speed limits for certain classes of vehicle, but none for ordinary private cars. That means that there is no speed limit under the Road Traffic Act for such cars; but there may be under other statutes, and so it leaves other statutory speed limits untouched. The Parks Regulations Acts are not in the schedule of repealed statutes, therefore they remain, and the regulations made under them are still in force.

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The King has been pleased to approve the appointment of Mr. KENNETH WILLIAM BARLEE to be a Puisne Judge of the High Court of Judicature at Bombay, in the vacancy to be created by the retirement, on 21st May, of Mr. Justice Madgaonkar.

# Some De-rating Decisions in the House of Lords.

THE decisions in the House of Lords in a number of de-rating cases, reported in *The Times* of 7th March, forcibly illustrate the maxim that one can seldom be sure of one's legal position under a new statute until one has been to the House of Lords. For the ratepayer in claiming to have his premises classed as an industrial hereditament the position in Scotland is infinitely preferable to that in England, since for good or bad the decision of one Court of Appeal is conclusive.

Probably the most important of the recent decisions, in the sense that they will affect the largest number of ratepayers, are those dealing with the interpretation of the definition of "retail shop" in s. 3 (4) of the Rating and Valuation (Apportionment) Act, 1928, namely, that it "includes any premises of a similar character where retail trade or business (including repair work) is carried on."

Sub-section (1), it will be remembered, excludes from the category of industrial hereditament premises which, though they constitute a factory or workshop, are *primarily* used for the purposes of either (*inter alia*), (*b*) a retail shop, (*c*) a distributive wholesale business, or (*d*) storage; or (*f*) for any other purposes which are not those of a factory or workshop.

Now in the courts below the main difference of opinion as to the exclusion of premises primarily used as a retail shop (with its extended definition) turned on the precise criteria by which the question as it related to any particular premises was to be decided. For instance, in the bakers' case—*Finn* (*Wimbledon Rev. Off.*) v. *Kerslake*—in the Divisional Court it was held that the method of distribution of the bread should be taken into account. As in the case of most bakers, the bulk of it was not sold over the counter in the shop situate in the same curtilage, but was distributed by roundsmen to hotels, restaurants and clubs (which took large quantities),and to private customers, and, acting on this criterion, it was held that the premises were primarily used for the purpose of a retail shop as defined above.

In the Court of Appeal it was held, however, that the proper view to take was to consider the premises themselves and not the method in which the goods were distributed, and the reasons given were adopted in the House of Lords in a previous case, *Potteries Electric Traction Co.* v. *Bailey* (*Rev. Off. for Stoke-on-Trent*), where Lord BUCKMASTER said: "The retail shop was to be found on the hereditament itself and not elsewhere; for were it otherwise, every manufacturer of goods which ultimately found their way into the hands of the public through the channel of retail dealers would be robbed of the benefit of the Act and, as Lord Justice Scrutton had pointed out, the Act would become a nullity."

In *Kerslake's Case* the House of Lords has cut the Gordian knot, as it appears to us, by deciding that the Divisional Court was right in its decision, but not altogether right in the reasons expressed for that decision, and that the Court of Appeal was right in its reasoning, but wrong in applying the reasoning to the particular case. Lord DUNEDIN, in delivering the judgment of the House, said that (we quote from *The Times*) "the hereditament" (i.e., the shop and the separate building in the same curtilage which formed the bakehouse) "was all occupied and used for one trade or business, namely, a retail trade or business in bread and confectionery—for it could not be doubted that the sale to hotels, clubs, restaurants, etc., was typical retail trade, and those sales, as also the orders given to roundsmen, were just part of the ordinary business of a retail shop. Similarly, the bakehouse at the back of the shop which made the goods for the retail business was an ordinary part of a retail baker's shop, and in his opinion was merely ancillary to the trade or business carried on in the shop. He had no doubt on the facts of this business that the whole hereditament was used and occupied for the purposes of a retail baker's shop and that there was no need to pray in aid the extended meaning given to 'retail shop' by the special definition in s. 3 (4)."

This decision appears to settle the question previously at issue with regard to all ordinary bakers' premises with a retail shop and a bake-house adjoining or in the same curtilage. No part of such premises can be de-rated. It does not, however, necessarily exclude from the benefit of de-rating a bake-house which is entirely a separate hereditament, even though some of the products of the bakery pass through a shop in another part of the same parish in the occupation of the same person. In such a case it would appear that the principles laid down in *Moon* v. *L.C.C.* and *The Potteries Electric Traction Cases*, referred to again later, would be applicable.

The next, if not the most important of the recent decisions of the House of Lords, are those of *Turpin* (*Middlesbrough Rev. Off.*) v. *Middlesbrough Assessment Committee* and *Kaye* (*Barnsley Rev. Off.*) v. *Eyre Bros. Ltd.*, in which the House decided that ordinary repairing garages were not to be treated as industrial hereditaments, since they came within the extended definition of retail shops. In these cases the Court of Appeal had affirmed the decisions of a majority of the Divisional Court, and held that the premises were not primarily used as retail shops. In giving the judgment of the House, Lord DUNEDIN extended and amplified the words of Lord BUCKMASTER in the earlier case quoted above, that: "the retail shop was to be found on the hereditament itself and not elsewhere." He, Lord DUNEDIN, "was unable to state what were the physical features the existence of which were essential to or distinctive of a retail shop . . . In his opinion it was not possible to say that the words 'of similar character,' even if they included, were limited to, the *physical* features of the premises. They must also include similarity of *character* in other respects. The character of the premises must be similar to the character of a retail shop."

Comparing the garage to a retail shop he found the same characteristic that "they were both buildings to which members of the public could resort for the purpose of having particular wants supplied and services rendered therein. Moreover, once repair work was included in the words 'retail trade or business,' it could truthfully be said that there was a similarity between the type of business carried on in this building and the type of business carried on in a retail shop." The hopes of the proprietors of repairing garages all over the country, which were raised by the decision of the Court of Appeal, of getting something off their rates have now been shattered, but it will probably be conceded that it never occurred to many, if indeed it occurred to any, of those Members of Parliament who voted in favour of the De-rating Bill, as it was called, that they were supporting a measure intended to benefit the occupiers of such premises.

One is inclined to wonder whether some such thought as this, what was the real intention of the Legislature, is not more of a guiding factor in the decision of the ultimate tribunal, composed as it is of members of the Legislature, than it is in the decisions of the Court of Appeal. Obviously the words the interpretation of which has given so much trouble to the courts, are capable of more than one construction. Whether that given by the Court of Appeal was not more consistent with the dictionary, or shall we say every day, meaning of the word we are by no means sure, but we cannot help thinking that the construction put upon them by the House of Lords was—as far as this particular class of property (repairing motor garages) is concerned and also as regards bakers' premises—that intended by the persons responsible for framing the rather unfortunately worded section.

The other decisions of the House are not perhaps of quite such extended application, but they largely settle the difficult problem of the construction of the words "altering and adapting for sale" in the Factory and Workshops Act, 1901.

In *Sedgwick* (*Camberwell Rev. Off.*) v. *Watney, Combe, Reid & Co.*, it was held that the beer-bottling premises of the well-known firm of brewers were to be classed as an industrial hereditament within the Act of 1928, on the ground that the carbonisation of the draught beer, which was done in

large tanks on the premises, was a necessary process to render the beer suitable for bottling, and that what was really done was the turning of an unfinished article into a finished one. The premises were therefore not excluded under the heading of premises primarily used for wholesale distributive purposes.

Again in *Kaye* (*Dewsbury Rev. Off.*) v. *Burrows*, and *Hines* (*Ipswich Rev. Off.*) v. *Eastern Counties Farmers Co-operative Association*, it was held (affirming the Court of Appeal, which had reversed decisions of the Divisional Court) that (1) rag-sorters' premises, and (2) seed-cleaning premises were entitled to the benefit of the Act. In both cases the finished article, the rags sorted, graded and baled for sale as raw material to different classes of manufacturers, and the seed cleaned from impurities so as to make it legally (under the Seeds Act, 1920) and commercially suitable for sale, was something made saleable where the original bulk could not be sold for the same purposes; in other words the finished article was different from the original bulk, and there was therefore an altering or adaptation for sale.

On the other hand the decision of the Court of Appeal in *Grove* (*Dudley Rev. Off.*) v. *Lloyds British Testing Co.*, was reversed, and that of the Divisional Court restored. The premises were used for testing ships' cables, which could not legally be sold as such without a certificate of test. Three links were cut out of the finished cable and tested. If they passed the test, they were re-welded to the cable; if not, three other links were tried and if they were satisfactory were re-welded. If neither set of three passed the test, the cable was rejected. This case had been the subject of dissenting judgments in both the courts below, and was obviously a border-line one. Lord DUNEDIN'S judgment in the House of Lords showed that the distinction rested on the fact that in the cases previously mentioned the process carried on rendered the thing itself a little different from what it was before, whereas the testing of the cable did not alter it in any way, any more than the test given by a veterinary surgeon in pronouncing on the soundness of a horse altered the animal. It having, however, been agreed by the parties that the premises in question constituted a factory within certain special provisions of the Factory and Workshop Acts, it was further held that they were excluded from the 1928 Act, by reason of the fact that the processes followed in testing the cables were not those of a factory or workshop, and therefore the proviso of s. 3 (1) (*f*) quoted above came into operation.

We have referred previously to the *Moon* v. *L.C.C.* and *The Potteries Electric Traction Cases*. These were before the House of Lords on 15th December last, and from them the principle has been definitely settled that, if a hereditament is an industrial hereditament as defined in the Act of 1928, the benefit of the Act is not lost by reason of the fact that the products of the factory comprising the hereditament are used by the occupiers of the factory for the purpose of some other business carried on in or from other hereditaments to which the Act does not apply.

In the former case the L.C.C. printed tickets, bills and notices for use in connexion with their tramway undertaking, and in the latter case the traction company used the hereditament in question largely or mainly for the manufacture of new parts which were fitted to their various omnibuses in the process of reconstructing the latter, and which otherwise they would have had to buy from manufacturers. On the other hand, the principle laid down in the court below that the provisions of s. 3 (2) excluding from the benefit of the Act premises used by the occupier for "the . . . maintenance of his road vehicles," applies, even though the premises are a separate hereditament, was affirmed. Accordingly only such part of the appellants' premises as were primarily used for reconstituting as apart from merely maintaining the omnibuses, ought to be placed in the industrial column. Rather than that the case should be sent back to quarter sessions, it was agreed that the paint shop only should be excluded from the industrial column.

# Wife's Costs in Divorce Proceedings.

[CONTRIBUTED.]

IT is a recognised rule of common law that a solicitor acting for a wife who is living apart from her husband cannot recover his costs against the husband where the wife has been guilty of a matrimonial offence. In *Durnford* v. *Baker* [1924] 2 K.B. 587, a solicitor acting for a wife who (unknown to the solicitor) had been guilty of a matrimonial offence, sued the husband for professional costs incurred on behalf of the wife in certain divorce proceedings and judgment was given against the solicitor and confirmed on appeal. Further, in *H. S. Wright and Webb* v. *Annandale* [1930] 1 K.B., p. 8, it was held that the rule applied not only where the wife has been living in adultery, but also where she has committed one isolated act of adultery.

Section 178 of the Judicature Act, 1925, provides that where it is intended to ask at the hearing that the discretion of the court may be exercised the petition (or answer) shall contain a prayer to this effect. This change from the old procedure compels a person asking for discretion to admit adultery in the petition (or answer) instead of leaving the matter undetermined until the trial of the suit. It is therefore a frequent occurrence for a wife to admit adultery at the very outset of the proceedings.

A long established practice of the Divorce Court (peculiar to this court alone) is to tax the costs up to the time of setting down and order the husband to pay such costs without waiting for the cause to be tried. It therefore often happens that an adulterous wife whose adultery is proved at the trial gets the costs of the suit down to the time of setting down, notwithstanding that she fails to obtain the costs subsequently incurred.

It appears to be logical that a wife should obtain her costs of prosecuting or defending her suit until her adultery was proved, and the practice prior to the Judicature Act, 1925, was not therefore unreasonable. The new practice, however, in which a wife's adultery is admitted at the outset of the suit (such admission being on oath in the affidavit sworn by the wife-petitioner (or respondent) in support of the petition (or answer)) raises the whole question of the right of an admittedly adulterous wife to an order for costs down to setting down or even an order for security of the remaining costs. It has been the practice of the Divorce Registrars to make the usual order for payment and security in discretion cases, but it may well be asked whether the practice is a sound one and justifiable in law.

It has always been contended, although no definite authority for this is to be found, that the Divorce Court possesses powers that override or disregard the common law—as, for example, that an adulterous wife can obtain maintenance from the Divorce Court where she is unable to do so at common law. But, as MCCARDIE, J., said in *Wickins* v. *Wickins* (2) [1918] P. 282, consistency is a desirable feature in English law: and if the common law denies an adulterous wife any right of maintenance the divorce law ought not to act inconsistently with the common law.

In any event the introduction of the new practice in 1925 raises definitely the issue of the right of an adulterous wife to the costs up to setting down.

The practice as to a wife's costs is set out in r. 91 of the Matrimonial Causes Rules, 1924 (which it may be pointed out were issued before the Judicature Act of 1925). The Registrar is therein directed to tax the costs up to setting down and make an order for payment on the husband, unless the husband by reason of his financial circumstances or for "other good cause" proves that such order should not be made upon him.

No definite decision as to the meaning of the words "other good cause" appears to have been made by the court,

although in *Johnstone* v. *Johnstone* [1929] P. 165, where a husband unsuccessfully pleaded that the fact that he was out of the jurisdiction was a "good cause" within the meaning of the rule, the court seemed to lean to the view that "good cause" had reference to other grounds than those of the financial circumstances of the husband. In *A.B. (Petition of)* [1927] P. 27, Lord MERRIVALE allowed a wife who had had a child by some person other than her husband, but who would not admit misconduct, to have her costs, but this was a somewhat exceptional case and the wife did not expressly admit adultery.

We are therefore thrown back upon the actual words of the rule "other good cause," and it would appear reasonable to hold that the fact that the common law refused an adulterous wife her costs of divorce proceedings against her husband is a "good cause" why no order should be made against a husband for costs. It might with some show of reason be said: "But the wife, even if she has been guilty of a matrimonial offence, ought not to be deprived of the right to have her matrimonial relations investigated by the court, especially as the court has power to exercise discretion in her favour." To this it may be answered that no litigant is denied the right to have his or her cause investigated by the court, and a wife who has put herself outside the right to pledge her husband's credit for necessaries is in no worse position as to prosecuting her suit in the Divorce Court than she is in prosecuting her claim in other actions—as, for example, for personal injuries. If she has no separate means, she can take advantage of the Poor Persons Rules.

There is no greater hardship in this than a guilty wife suffers under the common law procedure. It is in effect saying that the court, while exercising discretion in her favour, will not before investigating the case give her her costs as a matrimonial right. Her adultery having been proved on her own admission, there is a "good cause" why she should not have her costs. To read r. 91 otherwise would be inconsistent with the common law and produce the unfortunate result that a wife whose conduct had been flagrantly immoral would be encouraged to pursue her suit to trial, because to abandon it before setting down would be to deprive her of her costs.

## Reminiscences of Irish Draftsmen.

THE SOLICITORS' JOURNAL of 7th March announced the death of RICHARD MANDERS, K.C., an Irish barrister, who, since his retirement from the office of Registrar of Deeds and Titles at Dublin, had lived at Milford-on-Sea. Mr. MANDERS was a keen yachtsman, and during the war he held a commission in the Royal Naval Volunteer Reserve. The present writer remembers paying a visit to him at the Land Registry at that time; Mr. MANDERS was sitting at his table wearing an "office coat," whilst a jacket of blue with gold embroidery was hanging from a peg on the wall.

The office which MANDERS held from 1891 to 1908—before he took up the registrarship—is one to which greater historical interest attaches. He was the "Draftsman of Bills," i.e., the parliamentary draftsman, at the Irish Office, which was the London outpost of Dublin Castle, whose régime came to an end in 1922, when the present Irish constitutional arrangements were set up. MANDERS lived to see these changes, although he was but the penultimate Draftsman of Bills. He was succeeded in 1908 by FRANCIS NUGENT GREER (K.C., C.B., and later K.C.B.), but outlived his successor, who died in 1925.

GREER was a man of outstanding ability, a tremendous and conscientious worker, and a charming personality. His Irish friends made a point of visiting him when in London. To enter his room at Old Queen Street was to feel, in the jaded atmosphere of "S.W.1," a fresh breeze from across the Channel. GREER'S period as Draftsman of Bills was an interesting one. In 1909 there was Mr. BIRRELL'S Irish Land Bill; in 1911 the National Insurance Bill, which had to be applied to Ireland; and from 1912 onwards a series of legislative efforts for the settlement of the Irish question. These latter began with the Government of Ireland Bill of 1912, which received the Royal Assent, under the Parliament Act, in 1914, and was then suspended and, in 1920, repealed; and they culminated in the 1922 settlement. GREER was, needless to say, working at pressure in all these, and at the time of his death was the leading authority at Whitehall on Irish constitutional matters. But from 1920 onwards he was no longer "Draftsman of Bills." The Chief Secretary and the Irish Office were no more, and GREER was welcomed by his brother draftsmen—the Parliamentary Counsel—at the Treasury.

There were Draftsmen of Bills before MANDERS and GREER, but those are mere names to the present writer. He sees still, in his mind's eye, a bright room on the ground floor of a Georgian house—hard by the Cockpit Steps and the "Two Chairmen." This room had French windows, looking out upon Birdcage Walk, and the charm of the room and its occupant made it for many the pleasantest office in London. But it furnished reminders, too, of earlier Draftsmen. There, was a big black book, "The Irish Statutes Revised" (i.e., the statutes of the Irish pre-Union Parliament) which had been produced with scholarship and accuracy by one CULLINAN, sometime Draftsman of Bills. And pasted on the inside of the door of the press, where GREER kept his papers, there was a manuscript poem relating to one O'HARA, sometime Draftsman, wherein his permanence was contrasted with the transience of Chief Secretaries and Law Officers; these came and went, but

"Only O'Hara lingers on,
Drafting Bills when all are gone."

But—alas!—O'HARA'S permanence was but relative. Even the room where he laboured no longer knows the Draftsmen of Bills; and the last of those Draftsmen has gone to his rest.

## Charity and Public Utility.

IN deciding that the Swedish Travel Association was liable to income tax in respect of funds used for providing travelling scholarships for Swedish journalists, see *Anglo-Swedish Society* v. *Commissioners of Inland Revenue* (*The Times*, 4th March), Mr. Justice ROWLATT is supported by ample legal authority. He decided that the trust was not a charitable trust, but a trust of public utility, to bring about what the people who promoted it thought would be convenient. The objects of the association, as set out in its rules, were: "The promotion of a closer and more sympathetic understanding between the English and Swedish peoples, to secure which object it is proposed as a first measure to afford opportunities for Swedish journalists to visit the United Kingdom and to study at first hand British modes of thought and British national institutions."

The case of *Re Marmaduke Levitt* (1885), 1 T.L.R. 578, suffices to support the general statement in "Tudor on Charities," 5th ed., p. 30, that gifts for the encouragement of learning, as a bequest for the foundation of a scholarship, fellowship, or lectureship, are charitable. In *Re Marmaduke Levitt, supra*, it will be seen that it was held that as appropriate words had been used "as could be used for the purpose of founding University scholarships"—the university in question being that of Cambridge. It is conceivable that bequests to found scholarships might in some cases be held void as giving the discretion of applying the gift for purposes other than those which were strictly charitable—but this point could hardly arise where the donee was a recognised educational institution.

On the other hand, the Swedish trust was not regarded as purely educational in its nature. As the learned

judge said, it is not every trust for public utility which can be regarded as a charity. The same observation is to be found, in effect, in *Kendall* v. *Granger* (1842), 5 Beav. 300. In the judgment in that case the learned judge said: "This court has adopted a very narrow construction in deciding what is to be deemed a charitable purpose. . . Now a charitable purpose may very well, I conceive, be a purpose of general utility; but the question, which seems to me to arise in this case . . . is, are all purposes of general utility necessarily such purposes as this court deems to be charitable? I own, that in my opinion, according to the decisions which have taken place in this court, they are not. The words 'general utility' are so large that they comprehend purposes which are not charitable . . ."

The commendable motive of fostering mutual goodwill and friendly intercourse between two countries appears to drift out of the sphere of charity into that of public benefit—or it may even be regarded as a form of patriotism, on the ground that the promotion of friendly relations between two countries is likely to benefit the promoter and his compatriots. It cannot, in that case, be looked upon as entirely altruistic. From that point of view a patriotic motive may be looked upon as the antithesis of a charitable transaction, inasmuch as the element of self is, or ought to be, entirely absent from the latter.

The case of *Re Tetley; A.-G.* v. *National Provincial and Union Bank of England*, 68 SOL. J. 235; [1924] A.C. 262, supports the statement that a trust for patriotic purposes will be held not to be charitable as being void for uncertainty. Lord CAVE, L.C., in his speech says: "Whether a purpose is patriotic or not is a matter of opinion; it depends to a great extent upon the state of mind of the person who uses the expression." Again, Lord HALDANE says in his speech: "Between a patriotic intention and a charitable intention there is a distinction not only in language but in substance. In the case of a gift for charitable purposes there is a desire to profit people who would not be profited without your gift—that is the dominant motive. In the case of patriotism there is a desire to fulfil one dominant purpose, that is to benefit the cause of the country to which you belong. Those are two different heads of intention, different perhaps not in such a way that they never overlap, but in such fashion as to distinguish the one class from the other."

The *Swedish Case*, *supra*, would seem to fall between patriotic and charitable purposes, and to come within the utilitarian class as being partly patriotic and partly altruistic. In "Tudor on Charities," 5th ed., p. 65, the case of *Re Woodgate* (1886), 2 T.L.R. 674, is cited in support of the statement that gifts for utilitarian purposes have been held void for uncertainty. In that case NORTH, J., held that a gift by will to an executor upon trust at his discretion "to divide the same among the many sick poor with whom he came in contact or for any other utilitarian purposes that he might approve or choose," was not confined to charitable objects and failed for uncertainty.

# Company Law and Practice.

## LXVIII.

### THE QUALIFICATION OF DIRECTORS.—II.

In certain cases it is necessary that a candidate for a directorship shall actually hold the qualification shares before he is appointed a director, and if he does not, his appointment is invalid. This is so where the articles provide that persons shall not be eligible as directors unless they hold a share qualification: *Barber's Case*, 5 Ch. D. 963; but the word "eligible" means capable of being elected at some future election, and, consequently, persons appointed by the articles are outside a qualification clause of this kind, as they are not elected: *Forbes' Case*, 8 Ch. App. 768, per Lord SELBORNE, L.C., at pp. 774, 775. In order to be a holder of a share within the meaning of such an article, a person must be registered as a member of the company: *Spencer* v. *Kennedy* [1926] Ch. 125, per ASTBURY, J., at p. 134.

Two questions frequently arise in connexion with qualification shares: first, is a joint holding sufficient to qualify a director? and secondly, do shares which are held in trust sufficiently qualify a person as director? The answers to these two questions must depend in each case upon the actual wording of the articles, but it is possible, by an examination of the leading cases on the subject, to establish some sort of general idea of the underlying principles which govern the courts in this matter.

To deal first with joint holdings. It would seem to be the case that, unless the articles expressly provide for a sole holding of shares, a joint holding is sufficient for the purposes of qualification. In *Dunster's Case* [1894] 3 Ch. 473, it was held that the registration of a firm, of which D was a member, as the holder of shares was sufficient to qualify D as a director: and, in *Grundy* v. *Briggs* [1910] 1 Ch. 444, that a registration as executor, together with other executors, of G was sufficient to make G the registered holder of the shares in respect of which the executors were registered, for the purpose of qualification.

As regards shares held on trust, the position is, perhaps, not so obvious, owing to a decision which seems, at first sight, to deprive plain words of their plain meaning. First of all, unless the articles provide that the shares are to be held by a person in his own right, or make some other similar provision, it is immaterial whether or not the registered holder is executor, trustee or mortgagee. But it has become common form in modern articles of association to provide that the director shall hold the shares in his own right, and when this is so, some care is needed.

The leading case on this point is that of *Pulbrook* v. *Richmond Consolidated Mining Co.*, 9 Ch. D. 610. Here the material article provided that no person should be eligible as a director unless he held as registered member in his own right capital of the nominal value of £500 at least. A person who held capital of the nominal value of £500 had either transferred or mortgaged this capital—it is immaterial for this purpose which he had done, and there was some doubt—but he was the registered holder of it. He was elected a director, but his fellow directors refused to allow him to act; and, on his bringing an action, JESSEL, M.R., held that he was entitled to act as a director.

In the course of his judgment Sir GEORGE JESSEL refers to the section which is now represented by s. 101 of the Companies Act, 1929, which lays it down that no notice of any trust shall be entered on the register, or receivable by the registrar. So, says the Master of the Rolls, it cannot appear on the register itself that he holds the shares in trust, but he is to hold them as a registered member. Accordingly, as it must be found out *from the register* whether he is a registered member in his own right, this article cannot mean that he is to be beneficial owner.

The articles of the company were then further examined by the Master of the Rolls, and provisions for persons becoming entitled in consequence of the death or bankruptcy of a member, or in consequence of the marriage of a female, being registered, and for the registration of executors or administrators, were referred to. His lordship, therefore, came to the conclusion that there were classes of persons who might be registered, not in their own right, but in the right of other persons: this being so, it is possible to give a meaning to the expression "registered member in his own right," without going behind the express provisions of s. 101 and putting the company on inquiry as to whether the shares are held on trust.

This decision has been doubted on more than one occasion, but it must now be regarded as settled law: in *Sutton* v. *English & Colonial Produce Co.* [1902] 2 Ch. 502, BUCKLEY, J., as he then was, says, at p. 506, that the decision cannot now be treated as open to question.

(*To be continued.*)

# A Conveyancer's Diary.

**Settled Land Devolving in Undivided Shares.**

A very interesting and important case on this subject is *Re Cugny's Will Trusts: Smith* v. *Freeman* [1931] 1 Ch. 306.

By her will dated in 1900 a testatrix gave her residuary estate to trustees in trust to pay the net income arising therefrom to her daughter, Ethel Mews, during her life and after her death in trust for all or any her children or child who being a son or sons should attain the age of twenty-one years or being a daughter or daughters should attain that age or marry, and if more than one in equal shares. The testatrix declared that the share in the residuary estate given to any daughter of her said daughter should not vest absolutely in such daughter, but should so far as the law allowed be retained by the trustees in trust during the lifetime of such daughter to pay the income of her share to her for her separate use and after her death in trust for her children or remoter issue as therein mentioned. The trustees were appointed to be trustees for the purposes of the S.L.A.

The testatrix died in 1905, leaving her daughter, Ethel Mews, surviving.

By a vesting deed dated in 1927 the freehold premises which formed part of the residuary estate of the testatrix were vested in Ethel Mews.

Ethel Mews died in 1929, having had two children, John Keith Mews, who had attained twenty-one, and died in 1918, and Gladys Freeman, who survives and has two children The share of John Keith Mews in the residuary estate of the testatrix was vested and passed to his personal representative, whilst the share of Gladys Freeman was settled.

By her will, Ethel Mews appointed as her executors the persons who were then trustees of the will of the testatrix, and they obtained a grant of probate of her will.

The trustees having issued a summons for the directions of the court, Maugham, J., held that s. 36 of the S.L.A. applied, and declared that the plaintiffs, as executors of Ethel Mews, ought, pursuant to that section, to execute a vesting assent in favour of themselves as trustees of the testatrix's will. In so deciding his lordship stated that he accepted the view of para. 2 of Pt. IV of the First Schedule to the L.P.A., 1925, expressed in the note to that paragraph in "Wolstenholme and Cherry's Conveyancing Statutes," 11th ed., vol. I, p. 510.

So at last we have a decision regarding the application of s. 36 of the L.P.A., and para. 2 of Pt. IV of the First Schedule to the L P.A., and, moreover, a decision which does not adopt, or at any rate apply, to s. 36 of the S.L.A., the construction put upon s. 22 of the A.E.A. in *Re Bridgett and Hayes' Contract*.

The subject is one of great interest, especially in view of the fact that in consequence of the dictum of Romer, J., in *Re Bridgett and Hayes' Contract*, some eminent writers (most of them, I think, except myself, of course !) have applied *Bridgett and Hayes* to s. 36 of the S.L.A., and to para. 2 of Pt. IV of the First Schedule to the L.P.A. with somewhat curious results, as I shall show presently. I think, however, that I must set out the material parts of the statutory provisions, and the note in "Wolstenholme and Cherry" referred to by the learned judge.

Section 36 of the S.L.A. reads as follows :—

"(1) If and when, after the commencement of this Act, settled land is held in trust for persons entitled in possession under a trust instrument in undivided shares, the trustees of the settlement (if the settled land is not already vested in them) may require the estate owner in whom the land is vested (but in the case of a personal representative subject to his rights and powers for purposes of administration) at the cost of the trust estate to convey the land to them, or assent to the land vesting in them as joint tenants, and in the meantime the land shall be held on the same trusts as would have been applicable thereto if it had been so conveyed to or vested in the trustees."

Then by sub-s. (2) it is enacted that : "If and when the settled land so held in trust in undivided shares is or becomes vested in the trustees of the settlement," the land shall be held by them upon the statutory trusts. And by sub-s. (3), if the estate owner refuses or neglects for one month after demand in writing to convey "the settled land so held in trust in undivided shares in manner aforesaid," or if by reason of his being out of the United Kingdom or for any other reason, the court is satisfied that the conveyance cannot otherwise be made, the court may "on the application of the trustees of the settlement make an order vesting the settled land in them on the statutory trusts."

Now, I always thought and still think, that this section is perfectly plain, and I believe every one else thought so until the judgment in *Bridgett and Hayes*. Since then the text-book writers seem to have considered that a construction must be put upon it which would bring it into line with that judgment. For example, Mr. Williams in his "The Contract of Sale of Land," at p. 236, says that this section only applies where "undivided shares are limited for life estates only or where for any other reason the land continues to be settled land," after it has devolved upon persons in undivided shares. To such a pass has the judgment in *Re Bridgett and Hayes* driven even the most learned of our masters in the law of real property and conveyancing !

But I must pass on to para. 2 of Pt. IV of the First Schedule to the L.P.A., which reads :—

"Where undivided shares in land, created before the commencement of this Act, fall into possession after such commencement, and the land is not settled land when the shares fall into possession, the personal representatives (subject to their rights and powers for purposes of administration) or other estate owners in whom the entirety of the land is vested shall, by an assent or a conveyance, give effect to the foregoing provisions of this Part of this Schedule in like manner as if the shares had fallen into possession immediately before the commencement of this Act and in the meantime the land shall be held on the statutory trusts."

Apart from the judgment in *Re Bridgett and Hayes* I should have thought that there could be no doubt whatever what these two statutory provisions meant. In the first place it is clearly intended throughout the 1925 legislation that undivided shares shall not exist or be capable of being created, except as equitable interests behind a trust for sale. Section 34 of the L.P.A. makes provision regarding the future creation of undivided shares ; s. 36 of the S.L.A. provides for the case of land which at the commencement of the Act is settled land devolving upon persons in undivided shares ; the transitional provisions in Pt. IV of the First Schedule to the L.P.A. deal, in para. 1, with cases where land is held in undivided shares in possession at the commencement of that Act, and in para. 2 with cases to which none of the other provisions apply, namely, where undivided shares were created before the Act but fall into possession after the Act, and the land is not settled land, and so within s. 36 of the S.L.A.

That brings me to the note to para. 2 of Pt. IV in "Wolstenholme and Cherry," which was referred to and approved by Maugham, J., in *Re Cugny*. The note is as follows :—

"In the ordinary case of the termination of a life interest, S.L.A., 1925, s. 36, will apply ; this paragraph is only supplemental to that section and is designed to cover any case not within that section. For instance, the land might be vested in a corporation in fee simple with a right of reverter (e.g., on the dissolution of the corporation or the termination of a charitable trust not administered *cy près*) and the persons interested might be entitled in undivided shares.

"'The land is not settled land when the shares fall into possession'; it is impossible for the land to be 'settled land' after the shares have fallen into possession, for a trust for sale is immediately imposed; if a tenant for life dies, the land was then settled, but becomes subject to a trust for sale immediately after his death; where the land was settled at the time the trust for sale took effect, then S.L.A., 1925, s. 36, applies."

Mr. Williams and other writers hardly less eminent, however, have been assuring us that this is all wrong. Having regard to the decision in *Re Bridgett and Hayes*, we have been told, s. 36 of the S.L.A. only applies where the land continues to be settled land after the land has come to be held in trust for or devolved upon persons in undivided shares, and para. 2 of Pt. IV of the First Schedule to the L.P.A. applies where the land ceases to be settled land at the moment when the land so becomes held on trust or devolves.

Now Maugham, J., has held the precise opposite, and I am told that the decision is at variance with the dictum in *Re Bridgett and Hayes*. If that be so, I admit that I, for one, am not greatly concerned about it. But is it? The view expressed by Romer, J., in that case was based largely upon the fact that s. 22 of the A.E.A. was one of those sections which are grouped under the heading, "Special Provisions as to settled Land," and the learned judge pointed out that in the other two sections (23 and 24) "Settled land" meant land which after the death of the tenant for life continued to be settled land. His lordship therefore held that "settled land" must have the same meaning in s. 22. That line of reasoning cannot be applied to s. 36 of the S.L.A. or to para. 2 of Pt. IV of the First Schedule to the L.P.A., and I do not see why the decision in *Re Cugny* is in conflict with the dictum in *Re Bridgett and Hayes*.

I agree of course that this leads to a somewhat anomalous position. Take the common case of a settlement made before 1926 upon trust for A for life and after his death for his children in equal shares. A dies after 1925. Under s. 36 (2) of the S.L.A. the court may "on the application of the trustees of the settlement, make an order vesting the settled land in them on the statutory trusts," but if the same persons apply for a special grant under s. 22 of the A.E.A., their application will be refused on the ground that they are not trustees of the settlement; that in fact there is no settlement and no settled land in respect of which a grant can be made. That certainly is a somewhat curious result, but I do not see why the judgment in *Bridgett and Hayes* should be applied except to s. 22 of the A.E.A. with which alone it is concerned.

For my part I welcome the decision in *Re Cugny*, and I do not think that it is likely to be upset.

## Landlord and Tenant Notebook.

**Lease or Licence.**

The grant of the right of exclusive possession is an essential characteristic of a lease or tenancy agreement. The question whether it has been granted is one of fact, and the answer may depend on many circumstances. One would have expected that s. 7 of the Rent, etc., Act, 1923, which gives the landlord the right to impose an increase on the ground of sub-letting, would have led to new decisions: for the section only operates if a tenancy is created, and lodgers are often mere licensees. We have heard a tenant explain, in County Court proceedings, that alleged sub-tenants were relations who had come on a visit; and we have been consulted by an enterprising landlord as to whether a recent addition to his tenant's family constituted a "sub-let." But though there must be many border-line cases, the smallness of the permitted increase does, in practice, deter parties from carrying disputes to the High Court.

The best known leading case on the point is *Taylor* v. *Caldwell* (1863), 3 B. & S. 826, which is also an authority on the question of discharge of contract by impossibility of performance. It was held that an agreement for the hire of a music hall for four successive Monday evenings did not confer more than a licence. But among the numerous decisions which can be cited to illustrate the distinction, a good many are to be found in branches of the law other than that of landlord and tenant; the question may arise in connexion with rating, with compulsory purchase, and with trespass.

The language of the agreement is, of course, evidence of its effect, but in these cases it has been held over and over again that substance and not words must be regarded. The word "rent," for instance, is a convenient term by which to describe periodic payments, but its use is not very strong evidence of a tenancy.

Contracts for the feeding of cattle on grass land have frequently been under review. In *Mogg* v. *Overseers of Yatton* (1880), 6 Q.B.D. 10, a rating case, grass was "sold" under a fairly elaborate agreement providing when the buyer was to allow what animals to feed, and obliging him to clean the land and to repair fences, but it was held that the vendor remained rateable. In *Masters* v. *Green* (1888), 20 Q.B.D. 807, which was an action brought for illegal distress, the plaintiff's case depended upon what would now be s. 35 of the Agricultural Holdings Act, 1923, i.e., he claimed conditional privilege in that his beasts had been taken in to be fed at a fair price by the defendant's tenant. It appeared, however, that the agreement gave him the exclusive right to feed and take the grass for four weeks, and he was held to be a sub-tenant. Again, in *Richards* v. *Davies* [1921] 1 Ch. 90, an agreement letting the whole of the grass keep for the remainder of the defendant's tenancy was held to constitute a breach of his covenant against alienation, though if he had taken in cattle under an ordinary contract of agistment, i.e., at so much a head, there would have been no infringement.

Another type of agreement which may give rise to difficulties is the advertising station agreement. In a rating case: *Taylor, Garnett, Evans & Co.* v. *Overseers of Pendleton* (1887), 19 Q.B.D. 288, while consideration was paid to the fact that the agreements spoke of rent, notice to quit, etc., the real ground of the decision was that they could not have been carried out without exclusive occupation on the part of the grantees, who thus became rateable. But in *Wilson* v. *Tavener* [1901] 1 Ch. 579, although rent was payable on the usual quarter-days no tenancy was held to have been created by permission to "let you erect a hoarding for a bill posting and advertising station upon the ground by the forecourt": this was held to amount to a revocable licence determinable by reasonable notice. Again, in *King* v. *David Allen & Sons Billposting Ltd.* [1916] 2 A.C. 54, the grantor having given permission to affix bills on the walls of a cinematograph theatre for four years at a "rent" let the building to a company, and it was held that no interest in land had been granted and only damages could be claimed. Recently, a similar question arose in connexion with a covenant against alienation: *Stening* v. *Abrahams* [1931] W.N. 41, and though the covenant was very stringent the agreement with the advertisers, giving them the right to erect a hoarding over a shop fascia, was held not to constitute parting with possession of any part of the premises.

Sometimes the grant of what the instrument itself calls a licence will create a lease. In a Newfoundland case, *Glenwood Lumber Co.* v. *Phillips* [1904] A.C. 405, the Crown had "licensed" land to the respondent, his executors, etc., for twenty-one years; on the other hand the document also referred to a "demise." Its effect, however, was held to be such as to give exclusive occupation and the right to sue in trespass.

# Our County Court Letter.

## STATUTORY BARS TO MINERS' COMPENSATION.

In *Davies* v. *Fernhill Collieries, Ltd.*, recently heard at Pontypridd County Court, the applicant claimed compensation on the basis of total incapacity by reason of the amputation of his right foot, which had been crushed by a lump of coal weighing over a hundredweight. The respondents disputed liability in reliance upon breaches of the Coal Mines Act, 1911, as the applicant had left work without permission, and, at the time of the accident, he was contravening the statutory regulations by (*a*) travelling on a haulage road, and (*b*) riding on a journey of trams. His Honour Judge Rowland Rowlands, held that, as the applicant went out before the proper time, he could not be said to be acting for the purpose of the respondents' business, or in connexion therewith, when he sustained the injury. The latter was therefore not an accident arising out of or in course of the employment, and judgment was given for the respondents, with costs.

The scope of the Coal Mines Act, 1911, s. 43 (1), was considered in *Rock* v. *Stockingfield Colliery Co., Ltd.* [1922] W.N. 320, in which some men (having finished a night shift) were waiting together at the foot of an incline, when some trucks broke loose and injured one man but killed another. The respondents denied liability on the ground that (*a*) the men had congregated in breach of the notices warning them not to be on the haulage road contrary to the statutory regulations, (*b*) the management had also given verbal prohibitions to the same effect. The county court judge at Nuneaton found, however, that (1) the verbal prohibition had not been enforced, (2) the statutory prohibition did not apply where the gradient was less than one in twelve, as was the case at the spot in question, (3) the applicants were therefore entitled to awards. These were upheld in the Court of Appeal, where Lord Sterndale, M.R., observed that (*a*) the above sub-section did not refer to the average gradient, but only to the gradient at the spot where the men were, (*b*) the respondents had recognised this construction by only putting notices at the steepest parts. Lords Justices Warrington and Younger (as they then were) concurred that the accidents had arisen out of and in the course of the employment, and the appeals were therefore dismissed.

The last-named case was distinguished in *Hawkridge* v. *Howden Clough Collieries Co., Ltd.* [1923] W.N. 125, in which the applicant had been injured while walking along a way while the haulage was in motion. The county court judge at Dewsbury found that the respondents had not enforced the prohibition against walking, but there was also not a clear space of two feet between the tubs and the side along the whole length of the haulage. The applicant was therefore deemed to know that he was prohibited by statute from travelling along that road, and he was not entitled to compensation by the fact that there happened to be more than two feet clearance at the actual place of the accident. The Court of Appeal confirmed this decision, and Lord Sterndale, M.R., pointed out that, if the statute prohibited the applicant from doing that which caused the injury, it did not matter whether the respondents prohibited his doing it or not. Lord Justice Warrington (as he then was) observed that the applicant had proved that the rate of the haulage did not exceed ten miles an hour, but his case failed on the question of the space at the sides. The present Lord Atkin concurred in dismissing the appeal.

## THE LAW SOCIETY'S CRICKET CLUB.

The annual general meeting of the club will be held at The Law Society's Hall, on Thursday, the 19th March, at 6.15 p.m., and not on Wednesday, the 18th March, as stated in the March issue of The Law Society's *Gazette*. Persons wishing to become members should communicate with the Secretary, Louis D. Gordon, 11 and 12, St. James's-place, London, S.W.1.

# Practice Notes.

## SALE OF GOODS HELD UPON HIRE-PURCHASE.

The title of the purchaser in the above circumstances was considered in the recent case of *J. G. Murdock and Co.* v. *Jones and Another*, at Wellington County Court. The claim was for £14 5s. 6d. as damages for wrongful conversion of a piano, which had been let out in 1919 on the usual hire-purchase terms (the price being £77) to one Williams. Judgment was subsequently obtained against Williams for arrears of instalments amounting to £14 5s. 6d., and, after payment had been ordered at 5s. a week, an execution was levied. It then transpired that the piano had been sold for £16 10s. to the above-named defendants, who contended that (1) they bought in good faith ; (2) the judgment against Williams was a bar to any further action against themselves. The plaintiffs' case was that the property was never vested in Williams, whose purported sale was illegal, and therefore a good title had not passed to the defendants. In a reserved judgment, His Honour Deputy Judge W. H. Williams held that the document contained no agreement or obligation to purchase, and therefore the property had never vested in Williams, so as to enable him to confer a good title. On his default, however, the plaintiffs had been entitled either (*a*) to resume possession of the piano and so put an end to the case ; or (*b*) to sue for the balance, and they had chosen the latter alternative without inquiring about the piano, which at that time was still in the possession of Williams. The latter had paid £63 out of the £77 due, and had continued his payments to the date of the action against the first-named defendants, who were *bonâ fide* purchasers without notice of the plaintiffs' claim. Judgment was, therefore, given in their favour, with costs.

The above case shows that the owners of such goods cannot exercise their remedies concurrently, as the plaintiffs (if they had not obtained judgment against Williams) would have been entitled to succeed against the defendant Jones in accordance with *Helby* v. *Matthews* [1895] A.C. 471. Lord Herschell, L.C., there pointed out that the agreement provided for the hiring (at 10s. 6d. a month) of a piano, which (after three years) would have become the property of the hirer. The latter had not agreed to buy the piano, however, and had the option of returning it any time within three years, prior to which it remained the property of the owners, who could thus recover it from a purchaser from the hirer.

The disadvantage of the above forms of hire-purchase agreement is that goods which rapidly depreciate (such as motor-cycles) may be returned in a worn-out condition to the owners. The latter may, therefore, prefer to run the risk of fraudulent sales by the hirer, who may confer a good title on a purchaser in accordance with *Lee* v. *Butler* [1893] 2 Q.B. 318. In that case the hirer had no option of returning the goods, and it was held that an agreement to purchase had been entered into, so that the hirer could confer a good title upon a purchaser under the Factors Act, 1889, s. 9, now the Sale of Goods Act, 1893, s. 25.

A similar question to that in the first-named case (*supra*) as to how far a judgment against one defendant barred a fresh claim against another, was considered in a "County Court Letter," entitled "The Finality of Judgments," in our issue of the 17th January (75 Sol. J. 40).

## HOTEL GARAGE ACCOMMODATION.

The above question is usually regarded from the angle of innkeepers' liability, but the fact that they also have certain rights was recently shown at Maldon County Court in *Filby* v. *Bonner*, in which the claim was for £8 14s., being the amount of damage to an innkeeper's billiard table by a guest's car. The plaintiff had agreed to take the car into his garage for 1s. a night, and had asked the defendant to be careful of a billiard table, which was against the end wall. On the

fourth morning, however, the bumpers of the car were found in the middle of the slate bed, and the plaintiff's son stated that the defendant had accelerated too much when entering the previous night. The defendant's case was that (1) he told the plaintiff it was a near fit, and that the billiard table should be moved to the side; (2) he had driven the car inside on the night in question, according to the directions of the plaintiff's son, who made no complaint; (3) it was the duty of an innkeeper to provide a proper garage, whereas its condition was not reasonable and proper, owing to the presence of the billiard table. His Honour Deputy Judge Rowley Elliston held that the above was not a case of innkeeper and guest, but merely a question as to the hire of a garage. The plaintiff had offered what accommodation he had (attention being called to the billiard table) and the damage had been mentioned next morning, although it was curious the boy had said nothing at the time. Judgment was therefore given for the plaintiff, with costs. The law upon this subject was recently considered by the Divisional Court in *Winkworth* v. *Raven*, reported in our issue of the 14th February, 1931, 75 SOL. J. 120

## Reviews.

*Essays in Jurisprudence and the Common Law.* By ARTHUR L. GOODHART, M.A., LL.M., Barrister-at-Law, Editor of *The Law Quarterly Review*. Cambridge University Press. 1931. 15s. net.

In his biography of Lord Stowell, Mr. E. S. Roscoe remarks that "the study of jurisprudence as a science has never taken root in England, and legal study has been regarded mainly as a preliminary to the acquisition of money." There is no gainsaying the truth of this observation. We may regret that the fact is so, and that the word "jurisprudence" appears to be so distasteful to the average practitioner, but let not him who habitually adopts this attitude turn away from Mr. Goodhart's volume by reason of the word appearing on the title page, for if he takes it up he will be well rewarded by a careful perusal of its contents. The various papers of which the volume is made up have been contributed to periodicals in this country, in the Dominions, and in the United States, where they have attracted much attention. They were well worth collecting, constituting a particularly valuable addition to legal literature, and worthily maintaining the tradition of scholarship which we have been accustomed to associate with the work of each successive editor of *The Law Quarterly Review*. The subjects dealt with are not only of interest from the point of view of the scholar, but they are eminently practical in the sense that they can be of real use in the everyday work of the lawyer. The first paper, which bears the title, "Determining the *Ratio Decidendi* of a Case," analyses a number of leading decisions and shows how the ratio is to be arrived at, a process which is not so easy as many are apt to suppose. Incidentally, too, Mr. Goodhart insists that in many instances it is well to consult the various reports in which cases have been reported; thus the famous case of *Williams* v. *Carwardine*, which has troubled generations of law students so much, has had this effect because of the imperfect report in 4 Barnewell and Adolphus. An examination of the report in 5 Carrington and Payne removes the difficulty by recording an important question put during the argument by Lord Denman and the answer to it by counsel. Another leading case which has evoked a vast amount of criticism is *Smith* v. *London & South Western Railway Co.* (1870), L.R. 6, C.P. 14. It is acutely analysed in the same paper, and in the article on "*The Palsgraf Case*," where we are given a valuable examination of the question of liability for the unforeseeable consequences of a negligent act. These cases together with *In re Polemis and Furness Withy & Co.* [1921] 3 K.B. 560, have created a nice legal puzzle for the solution of which no slight skill has been required. Of great practical value also is the chapter devoted to "Liability for Things naturally on the Land," the things being weeds, trees, animals, and water, a wealth of learning being bestowed on each. Another, and not the least important of the articles is that on "Recent Tendencies in English Jurisprudence" which is full of shrewd comment and wise suggestion on the principles of international law, constitutional law, torts, contract, companies, properties, domestic relations, and criminal law as at present administered. In most of these subjects there is ample room for improvement. As is pointed out, it is "not in consonance with modern ideas of morality that a man may intentionally injure another without incurring any legal liability . . . A man may erect a spite fence on his own land because he wishes to cut off his neighbour's view. He may drain percolating water for the sole purpose of injuring another's reservoir. His motive will not be considered by the court however clear the evidence of malice may be." Sooner or later, Mr. Goodhart contends that the English law will have to be changed so as to include the principle embodied in the German code: "The exercise of a right which can have no purpose except the infliction of injury on another is unlawful." Of topical interest is the paper on "The Legality of the General Strike," in which, again with much learning and ingenuity, Mr. Goodhart argues that the leaders of the strike of 1926 were not guilty of a criminal offence; in other words that their proceedings could not be impugned on the score of illegality. All may not agree with this contention, but cogent reasons are given for the views expressed. We have drawn attention to a few only of the papers which make up the volume and indicated the nature of their contents, sufficiently, we hope, to induce readers to study the book for themselves. It deserves and we trust it will obtain a wide circulation. An excellent index is added, an adjunct not always vouchsafed to a collection of essays, and further there is an index of the names of the writers and judges whose opinions are quoted or referred to. This is a useful innovation.

*The Law of Savings Banks, Government Annuities and National Savings Certificates.* By JOHN Y. WATT. Second Edition. 1931. Demy 8vo. pp. lviii and (with Index) 602. London: Butterworth & Co. (Publishers), Ltd. 45s. net.

The enormous increase in the volume of business done by savings banks, post office and private, enhances the practical value of this book, which states the whole of the law affecting both kinds of savings banks, government annuities, and national savings certificates. The management of savings banks, their relationship to the National Debt Commissioners, the position of depositors and the possible rights of third parties who have claims against depositors, are clearly described (the arrangement of the subject-matter is excellent) and the law is illustrated by reference to numerous decisions of the Registrars, which do not find their way into the ordinary law reports. Attention has been paid to important changes in the law permitting depositors to use the banks as stock-brokers, and emphasis is laid, as it should be laid, on the limited scope of the bank's functions when so used. The whole of the statutory provisions governing the subject are set out in an Appendix.

*Byles on Bills.* By A. W. BAKER WELFORD, Barrister-at-Law. Nineteenth Edition. 1931. Royal 8vo. pp. lxxvi and (with Index) 447. London: Sweet & Maxwell, Ltd. 35s. net.

The new edition of this well-known work is edited by Mr. Baker Welford, who not only makes good his modest claim to have preserved the form and arrangement of book and subject-matter, but also succeeds in maintaining the high standard set by the original author 102 years ago and by

his descendants since. In a legal journal, the readers of which will all be familiar with the work, it is hardly necessary to say more; but it is worth mentioning that bankers as well as lawyers may benefit by a perusal of the new notes on the subject of crossed cheques. The circumstances which ought to put a banker on his inquiry are carefully examined in the light of several recent cases in which they have been under discussion.

While for sentimental reasons one cannot but regret that for the first time in its history no member of the Byles family has had a hand in the preparation of an edition, the thought that a standard work of recognised value is not to be allowed to become obsolete provides comfort to the practical practitioner.

*A Manual of Rating.* By S. R. C. Bosanquet, K.C., Recorder of Walsall, and Percival Frere Smith, of the Northern Circuit, Barrister-at-Law. London: Chapman & Hall. 25s. net.

Many are the volumes that have appeared on this subject since the passing of the Rating and Valuation Act, 1925, the first of a series of enactments which has been rounded off by the passing of the Railways (Valuation for Rating) Act, 1930. The volume before us covers the whole ground and includes a special chapter dealing with the position of railways under the Act of 1930. The learned authors, recognising that the difficulty to a layman of understanding the difficulties of rating and valuation procedure have been further increased by the adoption of the system of "legislation by reference" and by the use of involved and ambiguous language, have set themselves in preparing this volume to the task of presenting the new system in a form readily accessible to practical men engaged in acquiring a working knowledge of the practice of rating and valuation. The subject is dealt with on lines of practical exposition of the main principles of the new system, with references to the appropriate sections of the statutes which appear in the Appendices. The latter include all the important Statutory Rules and Orders, with the Resolutions of the Central Valuation Committee; whilst an excellently arranged index completes the making-up of a book for which there is likely to be a wide demand. One great virtue in the volume is that the reader can speedily find what he wants.

## Books Received.

*Abstracting and Deducing Title.* By A. H. Cosway. Crown 8vo. pp. xii and (with Index) 158. London: Effingham Wilson. 5s. net.

*County Court Costs.* By F. W. Broadgate. Demy 8vo. pp. xiii and (with Index) 173. London: Effingham Wilson. 10s. 6d. net.

*Kime's International Law Directory for* 1931. Established by P. G. Kime. Edited and compiled by P. W. T. Kime. Thirty-ninth year. Crown 8vo. pp. xiii and (with Index) 583. London: Butterworth & Co. (Publishers) Ltd.; Kime's International Law Directory, Ltd. 15s. net.

*Back Duty.* By Ronald Staples, Editor of "Taxation." Demy 8vo. pp. (with Index) 112. London: Gee & Co. (Publishers) Ltd. 10s. 6d. net.

*The Land Drainage Act*, 1930. By Alban Dobson, C.B.E. Assistant Secretary, Ministry of Agriculture and Fisheries, and Hubert Hull, Barrister-at-Law. Royal 8vo. pp. xxiii and (with Index) 154. London: Humphrey Milford, Oxford University Press. 14s. net.

Sir Arthur Hay Stewart Reid, M.A., barrister-at-law, of Wimborne, formerly Chief Judge of the Punjab, who died on 7th November, aged seventy-nine, left £3,130, with net personalty £2,926.

# In Lighter Vein.

The Week's Anniversary.

On the 10th March, 1572, died William Paulet, Marquis of Winchester, being then almost 100 years old. The precautions which enabled him to attain this respectable age were as follows:—

"Late supping I forbear;
Wine and women I forswear;
My neck and feet I keep from cold;
No wonder, then, that I am old."

Scarcely less remarkable was his political survival. He held the Great Seal as Lord Keeper under Edward VI, and in the course of his career chose just the right time to be for and against the protector Somerset, to support Lady Jane Grey and to welcome Queen Mary, besides retaining the favour of Queen Elizabeth in his last years.

Common Law.

Lord Darling's recent remark that the common law of England is always common sense, may not have found an echo in the hearts of all the listeners in the gallery. Nevertheless, most lawyers will agree that the greater part of the legal anomalies which excite the layman's scorn result from ill-considered meddling by elected legislators—statute polluting the pure stream of legal development.

Of the common law, what said the great Serjeant Plowden? "It is no other than pure and tried reason." Coke went further, "It is," he said, "the absolute perfection of reason; the ground thereof is beyond the memory or register of any beginning."

What Lord Darling thinks of the common law in his lighter moments may be gathered from his well-known epigram:—

"No code to Britons gave a right.
They reasoned wrong; then saw
Their common error's regal might
And hailed it common law."

Gaoled for Debt.

Many people will share the surprise expressed by Mr. Justice Swift on hearing that 2,419 debtors went to Brixton Prison last year.

However, did Dickens live to-day, it may be doubted whether the present situation would rouse his indignation as did the old scandal of the Fleet Prison. Anyone who has listened to the judgment summonses in almost any county court knows with what reluctance a committal order is made, even against a slippery debtor.

If some persons are inclined to cry out, let them remember how, under the old order, the Thatched House Society in twenty years ransomed over 12,000 honest debtors at an average payment of 45s. each.

An immeasurable gulf lies between Brixton in 1930 and the Fleet in the days

"When old unbroken Pickwick walked
Among the broken men."

An Attentive Gesture.

While Judge Morchausen was hearing a matrimonial case recently at White Plains (N.Y.), he interrupted the proceedings to telephone a greeting to his wife, having suddenly recollected that it was the forty-second anniversary of their wedding.

This delicate attention recalls the old story of Serjeant Hill, who once startled the assize court at Leicester, when, in the middle of a case, he told his clerk in a very clear and distinct aside to "offer his compliments to Mrs. Hill and to express his great regret that he would not be able to sleep with her that night as he expected to be detained until very late."

# POINTS IN PRACTICE.

**Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to The Assistant Editor, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.**

**Trustees Holding Land for Golf Club**—Number Permissible.

*Q.* 2166. Twelve persons hold land as trustees for a golf club. They purchased such land prior to 1926 and are now about to purchase additional land for the purposes of the club. The rules of the club provide that the land should be vested in the names of the trustees. Should such purchase be taken in the twelve names or in the names of four of them only?

*A.* In "Everyday Points in Practice," pp. 28-36, the opinion was given that in such a case no new trustees could be appointed till the number had been reduced to three. If the members of a golf club are persons jointly entitled then s. 36 of L.P.A., 1925, applies, and the new conveyance would have the effect of making the trustees trustees for sale, and the conveyance would in our opinion be a disposition on trust for sale under T.A., s. 34, and the number of trustees must be limited to four. There appears to be no definite provision that conveyances after 1925 in trust for tenants in common should create trusts for sale though there is no doubt the intention was that this should be the case. It must be said, therefore, that not more than four trustees should be named.

**Misrepresentation as to Decontrol.**

*Q.* 2167. Relying on the verbal representations of the vendor's agent that a certain house, let to a weekly tenant, was decontrolled, A agreed to purchase the same, which he required for his own occupation. Subsequently, the vendor's solicitor wrote to A's solicitors saying that he understood the house was decontrolled. The purchase was completed and notice to quit was given by A to the tenant. The tenant refuses to give up possession and claims the protection of the Rent Restrictions Acts. The vendor now declines to give the necessary information to A to enable him to bring a successful action for possession, and intimates that he will support the tenant in retaining possession if an action is brought. The vendor's agent will admit that he represented the house to A as being decontrolled, and that he was so informed by the vendor. What remedy, if any, has A against the vendor or the vendor's agent?

*A.* It should be ascertained whether the conditions of sale contained any proviso similar to cl. 10 of the National Conditions of Sale, under which no error or mis-statement shall annul the sale or give rise to a claim for compensation. If there is such a condition, A has no claim against the vendor. See *Curtis* v. *French* [1929] 1 Ch. 253. Even without such a condition, A will have difficulty in finding a remedy, as the vendor's solicitor merely wrote that he "understood" the house was decontrolled, and A's proper course would have been to make it a condition that the vendor should obtain vacant possession before completion. In the absence of a breach of warranty (as to the facts upon which decontrol was based) A has no remedy against the vendor or his agent.

**Mesne Landlord and Tenant's Compensation.**

*Q.* 2168. A is the owner of leasehold premises held on a ninety-nine years' lease which will expire in a few days. A (or his predecessor in title) granted a lease of the premises before the date of the Act which will expire at the same time (or approximately) as the first-mentioned lease. The premises consist of a hotel, etc.; A is, of course, not in possession of the premises or carrying on a business and the only benefit he gets is the rent from B: (*a*) Has A any claim against his superior landlord for compensation for goodwill or a new lease? (*b*) If B claims against A either for compensation for goodwill or a new lease, can A claim against his superior landlord under s. 8? (*c*) If A has no claim on his own behalf can he drop out of the proceedings leaving superior landlord to deal direct with B? If not, it seems A is in a difficult position in that he does not benefit at all and yet has to incur responsibilities and costs purely for the benefit of B. (*d*) If the tribunal orders a new lease to be granted, will it be to A or B?

*A.* (*a*) A has no claim, as there has not been any carrying on by him or his predecessors of a trade or business for five years, as required by the L.T.A., 1927, s. 4 (1). (*b*) If B claims against A, A can make a claim as a mesne landlord under s. 8. (*c*) A can retire from the proceedings provided that he serves the requisite notices on his superior landlord. (*d*) The above is not an occasion for the grant of a reversionary lease under s. 5 (11) and therefore, the tribunal can order the granting of a new lease to B.

**Housing Subsidy**—Security for Breach of Subsidy Agreement.

*Q.* 2169. We shall be obliged if you will give us your opinion as to whether on a breach by a builder of a house, or his assigns, of a subsidy agreement granted under the Housing, &c., Act, 1923, any moneys which may be payable to the local authority in respect thereof are charged upon the property itself, or whether the only remedy of the local authority is against the person who has violated the agreement.

*A.* We think it lies on the purchaser's solicitors to ascertain what exactly was the form of security taken by the particular local authority. The authority had under s. 2 (5) power to take security which would be a charge on the property, or it could, if it wished, take a mere personal agreement or covenant which would not be such a charge. See as to registration in Local Land Registry, L.C.A., 1925, s. 15 (5) and (7), as amended of L.P.A. (Amend.) A., 1926.

**Company**—Executor Claiming Registration as a Member.

*Q.* 2170. In winding up an estate, of which there is only one executor, who is interested in the residue in connexion with the stocks and shares forming part of testator's estate, and in respect of which the shares have been registered in the name of the executor as an executor, we propose that the executor shall take some of the stocks and shares as part of his share in the residue of the estate, and for this purpose it is, of course, necessary that the shares shall be transferred into his name. We are of the opinion that no transfer fee shall be payable in view of the fact that the executor will be merely transferring to himself, and we recollect seeing an opinion on these lines in The Solicitors' Journal, but unfortunately have been unable to trace this. We shall, therefore, be glad to know if our contention is correct.

*A.* The answer to the question appears to depend on the articles of association of the particular company. The registration of the executor as a member is not a transfer, and if the articles only provide for a fee for registration of transfers (and probates or letters of administration), no further fee is payable. See Companies Act, 1929, s. 63, and as to right of executor to be registered as a member, *Re Saunders & Co.* [1908] 1 Ch. 415.

**Land Held in Fee Simple** SUBJECT TO MORTGAGES AND ANNUITIES CREATED BY VOLUNTARY SETTLEMENT—VESTING.

*Q.* 2171. A, in 1923, conveyed to a trustee the equity of redemption in certain freehold property, to be held by the trustee to various uses therein expressed for the purpose of securing the payment of annuities to B and C, and other sums to the children of B and C, and subject thereto, to the use of A. At the date of this conveyance the property was subject to first and second mortgages. The annuities have determined, and A is about to pay off the mortgages on the property, and also satisfy the other sums secured by the conveyance, and it is desired to re-vest the legal estate in the property in A, freed from the trusts and provisions contained in the conveyance to the trustee. It is assumed that on the 1st January, 1926, the property vested in the trustee in fee simple, subject to mortgage terms in favour of the first and second mortgagees, and it is proposed that the trustee should now execute a deed reciting the facts and conveying the fee simple to A, subject to the mortgages, but freed from the said uses or trusts, and then for receipts to be endorsed on the first and second mortgages. We should feel obliged if you would let us have your views as to whether this is the correct way of carrying out the transaction, and if you could refer us to a precedent to meet the case.

*A.* The legal estate prior to 1st January, 1926, was in the first mortgagee. The conveyance of 1923, which it was presumed was a voluntary one, or by way of family arrangement, only operated by means of trusts and not through the Statute of Uses. It would have been quite contrary to the policy of the 1925 Act for the legal estate to have vested in the trustee. It passed to A as tenant for life under S.L.A., s. 1 (1) (*v*), L.P.A., 1st Sched., Pt. II, paras. 3 and 5. A has a good title to convey subject to the charges (or free from them when discharged) by the Amendment Act, 1926.

**Restrictive Covenants**—BURDEN OF.

*Q.* 2172. A conveys vacant land to B in 1928, subject to restrictive covenants which are registered under Land Charges Act, 1925. B conveys part of the land to C, a builder, in 1930, subject to same covenants, who covenants to observe same. C has built houses upon the land conveyed to him and has sold and conveyed these houses to separate and individual purchasers at various dates in 1930, subject to same restrictive covenants, and each such purchaser has covenanted to observe these covenants. No priority notice or registration of the covenants was given or made on the sales to the individual purchasers or since. These individual purchasers (now owners) are apparently bound by their covenants ("Everyday Points in Practice" on Case No. 1, p. 347-8).

(*a*) Will any *future* purchasers of the houses from the present individual owners be bound by the restrictive covenants in the absence of registration at the time of the conveyances to such individual owners in view of s. 13 (2) of the Land Charges Act, 1925, even if in their contracts of sale the property is sold subject to the restrictive covenants?

(*b*) If not, would registration now of the covenants by such individual owners be effective to bind such future purchasers?

*A.* (*a*) For many years, and possibly indefinitely, every purchaser taking any part of the land sold to B (and the sites of the houses are parts thereof) will take subject to the restrictive covenants registered on the occasion of the sale to B (L.P.A., 1925, s. 198 (1)). Accordingly all future purchasers of the houses will take subject to those covenants. These covenants were, in a sense, re-imposed on the sale to C and on the sales to the owners of the houses, but as these re-impositions were not registered, only the actual covenantors are bound thereby. Disclosure of the restrictive covenants is no longer the vital point, but the registration thereof.

(*b*) *Cadit quæstio.* In any case we do not see that the individual owners could register the restrictive covenants very well as against themselves.

# Correspondence.

## Joint Deposits.

Sir,—Somerset House accept the signature of the solicitor to form No. 36 as to joint accounts, which is a peril to the solicitor. In obtaining particulars recently of a deceased's estate I discovered there was about £2,500 in joint names, and upon insisting upon disclosure in the Inland Revenue accounts was met with the comment that it was not necessary as it would pass automatically to the survivor, and other men knew how to do it. Disclosure has been made and duty will be paid, but I might easily have signed form 36 that there were no moneys standing in joint names and in the absence of signed particulars by the client have been in a very unhappy position. I am afraid it is no use closing our eyes to the fact that there are members of our profession who turn a blind eye to the question of joint accounts for duty purposes, and it is very unfair to the man who will not lend himself to the practice. The revenue authorities ought in their own interest to add a clause to the Inland Revenue affidavit that there were no moneys on joint account.

Halifax. L. H. W.
9th March.

# Obituary.

MR. F. N. R. LAING, K.C.

Mr. Frederick Ninian Robert Laing, K.C., died at Billericay on Tuesday, the 10th March, in his seventy-fifth year. Mr. Laing was called by the Middle Temple in 1883, took silk in 1899, and was elected a Bencher of his Inn in 1908.

MR. C. BAKER.

Mr. Charles Baker, solicitor, of Essex-street, Strand, W.C.2, died on Wednesday, the 4th March, while addressing a meeting of the Eighty Club at the National Liberal Club. Mr. Baker, who was a member of the National Liberal Club, was admitted in 1895, and was senior partner of the firm of Messrs. Kenneth Brown, Baker & Baker, solicitors, of London, Brussels and Paris.

MR. A. NEALE.

Mr. Alexander Neale, solicitor, of the firm of Messrs. Waller, Neale & Houlston, solicitors, of Clement's Inn, W.C.2, died on Monday, the 2nd March, in his seventy-third year. Mr. Neale, who was admitted in 1880, was Clement's Inn Prizeman at the Honours Examination, and had been one of The Law Society's Examiners since 1902.

MR. A. H. WILKINSON.

Mr. Arthur H. Wilkinson, solicitor, of Leyburn, died suddenly on Monday night, the 2nd March. Mr. Wilkinson was Clerk to the Justices, and was admitted in 1899.

MR. H. M. HIGHET.

Mr. Hugh MacGregor Highet, solicitor, of Irvine, died on Wednesday, the 4th March, in his eighty-ninth year. He had held many public appointments, and at the time of death was Procurator-Fiscal for the Burgh of Kilwinning.

MR. A. A. COOPER.

Mr. Albert A. Cooper, solicitor, of Dundee, died on Monday, the 9th March, at the age of forty-seven. Mr. Cooper was a partner in the firm of Messrs. Smith & Moncur, solicitors, of Dundee.

MR. H. H. W. SPARHAM.

Mr. Harry Hadden Wickes Sparham died at Sydenham on Wednesday, the 4th March, in his seventy-eighth year. He was called to the Bar by the Inner Temple in 1878, and joined the South Eastern Circuit.

# Notes of Cases.

## High Court—King's Bench Division.

### General Asphalt Co. and Barber Asphalt Co. *v.* Anglo-Saxon Petroleum Co., Ltd.

Roche, J. 18th February.

CONTRACT—UNDEVELOPED OIL CONCESSION—AGREEMENT TO SECURE DELIVERY OF OIL—EXERTING INFLUENCE—PROPER MEANS—PAYMENT OF MONEY.

The plaintiffs in this action, General Asphalt Co. and Barber Asphalt Co., claimed from the Anglo-Saxon Petroleum Co., Ltd., damages for the alleged breach of an agreement in connexion with the delivery of royalty oil from the Vigas Concession, Venezuela. The Vigas Concession was owned by the Colon Development Co., the majority of whose shares were held by the Burlington Investment Co. Under an agreement of the 12th July, 1923, a date at which no oil had been produced from the concession, it was provided, *inter alia*, that the defendants, the Anglo-Saxon Petroleum Co., Ltd., should obtain complete control of the Burlington Investment Co., and should use and exercise such rights and influence as they might then or at any time possess to procure the Colon Development Co. to deliver to the plaintiffs during the period of the Vigas Concession by way of royalty oil 9⅜ per cent. of the crude oil produced from the properties included in the concession. The oil was in fact sold to the Asiatic Petroleum Co. The plaintiffs claimed damages for the alleged breach of the agreement of 1923, and alleged that the defendants could have influenced the Colon Development Co. to deliver the oil to the plaintiffs. The defendants, *inter alia*, contended that there was no obligation on them to give consideration to the Colon Development Co. to induce them to deliver the oil; they further contended that if oil from the Vigas Concession was in fact bought by them for their own purposes, they were not bound to deliver thereout royalty oil to the plaintiffs.

ROCHE, J., said that in the present case the agreement to use influence did import an obligation to pay money if that should be necessary. A reasonable and proper means whereby influence should be exerted by the defendants on the Colon Development Co. included the passing of consideration from the defendants to the Colon Development Co. The question was one of the interpretation of a single clause in an agreement. There would be judgment for the plaintiffs.

COUNSEL: *Sir Patrick Hastings*, K.C., *Sir Boyd Merriman*, K.C., *Lionel Cohen*, K.C., *Van Breda*, and *Roger Bacon*, for the plaintiffs: *Sir John Simon*, K.C., *Wilfrid Greene*, K.C., and *Andrewes-Uthwatt*, for the defendants.

SOLICITORS: *Lawrance, Messer & Co.*: *Waltons & Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

### Administrator of Hungarian Property *v.* Finegold.

Lord Darling (sitting as additional King's Bench Division Judge). 20th February.

PRINCIPAL AND AGENT—DEBT DUE TO EX-ENEMY—CLAIM BY ADMINISTRATOR OF EX-ENEMY PROPERTY—AGENT OF CROWN—STATUTE OF LIMITATIONS NOT APPLICABLE.

The plaintiff in this action, the Administrator of Hungarian Property, appointed under the Treaty of Trianon, claimed from Charles Finegold £128 6s. 5d., as the balance of a sum of £148 14s. 2d. payable for goods delivered to a partnership of which the defendant was one of two partners, by one Mor Elias, a Hungarian national, in May to July, 1914. £20 7s. 9d. had been received by the present plaintiff in the bankruptcy of the defendant's former partner, and the defendant was now given credit for that amount. The defendant denied liability, and pleaded, *inter alia*, that the plaintiff had no right to sue, and that in any event the action was statute barred.

Lord DARLING held that the Administrator was entitled under the Treaty of Trianon to bring the action. It was said that the Administrator could not recover because more than six years had elapsed since the money was due. The plaintiff contended that he represented the Crown and that the Statute of Limitations did not apply to the Crown. His lordship referred to the cases of *Rustomjee* v. *The Queen* (1876), 1 Q.B.D. 487, and *Weiner* v. *Ustav* (unreported), and said that he thought that the Administrator was the agent of the Crown to collect the money under the Treaty and distribute it to those entitled, and he was not therefore subject to the Statute of Limitations. Judgment for the plaintiff.

COUNSEL: *Wilfrid Lewis*, for the plaintiff; *J. W. Morris*, for the defendant.

SOLICITORS: *Solicitor to the Clearing House*; *Scott Duckers and Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

### Societa Ligure di Armaments, etc. *v.* Joint Danube and Black Sea Shipping Agencies of Braila.

Mackinnon, J. 2nd March.

CARRIAGE OF GOODS BY SEA—GRAIN—CHARTER-PARTY—CONSTRUCTION OF TIME CLAUSES—DEMURRAGE AND DISPATCH MONEY.

Special case stated by an umpire.

By a Chamber of Shipping Danube Berth Contract, 1911, Charter-party, dated the 28th September, 1929, the Societa Ligure di Armaments, owners of the steamship "Euro," chartered that vessel to the Joint Danube and Black Sea Shipping Agencies to go to Sulina for orders, and thence to proceed to a port or ports as ordered for loading. Clause 5 of the charter-party provided that orders for the first loading port should be given within six working hours of receipt of written notice of the steamer's arrival at Sulina. By cl. 9: "If the steamer be longer detained than the time stipulated above demurrage shall be paid day by day at the rate of £30 per running day; but the charterers shall not have liberty to detain the steamer on demurrage beyond 15 running days," and for time saved in loading the charterers were to have dispatch money at the rate of £15 a day. On arrival of the "Euro" at Sulina, instead of giving her loading port orders within six hours of written notice of arrival, the charterers in fact gave the orders four days seventeen hours late. The "Euro" was then ordered to Braila to load. Loading began on the 10th November, 1929, and if it had continued at the rate required by cl. 4 of the charter-party, it would have taken seventeen and a half days. The loading was in fact completed in nine and three-quarter days. The charterers would, on those figures alone, have been entitled to dispatch money for seven and three-quarter days at £15 a day. The question arose, however, how that was to be set off against the four days seventeen hours during which they had failed to give the steamer orders at Sulina. The umpire found that the shipowners were entitled to damages for detention at Sulina independently of any claim which the charterers might have for dispatch money.

MACKINNON, J., said that he agreed with the contention of the charterers that the words in cl. 9, "if the steamer be longer detained than the time stipulated above," were meant to cover all the references to time in the preceding clauses, and was not confined to the time occupied in loading. On her visit to the Danube the "Euro" had actually only spent about fifteen days instead of the eighteen which she might have taken. The award of the umpire was wrong, and there was nothing payable from the charterers to the shipowners either as demurrage or as damages for detention.

COUNSEL: *Sir Robert Aske*, for the charterers; *Harold Stranger*, for the shipowners.

SOLICITORS: *W. & W. Stocken*; *Middleton, Lewis and Clarke*.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

## Probate, Divorce and Admiralty Division

**L. *v.* L.** Lord Merrivale, P. 11th February.

DIVORCE—PRACTICE—ESTOPPEL—WIFE'S PETITION FOR DISSOLUTION—MOTION TO STRIKE OUT ALLEGATIONS IN HUSBAND'S ANSWER—DEED CONTAINING "*Rose* v. *Rose* CLAUSE"—*Rose* v. *Rose* CLAUSE CONSIDERED WITH REGARD TO PUBLIC POLICY—DISCRETION.

This was a motion by a wife petitioner to strike out such paragraphs of the respondent's answer as alleged that the petitioner had committed adultery prior to the date of a deed of separation entered into by the parties compromising an earlier suit by the wife. The deed incorporated what is commonly known as a *Rose* v. *Rose* clause, a form held to be valid by the Court of Appeal in *Rose* v. *Rose* (1883), 8 P.D. 98, viz., "No proceeding shall be commenced or prosecuted by or on behalf of either party against the other in respect of any cause of complaint which now exists or has arisen before the date of these presents and every offence (if any) which has been committed or permitted by either party against the other shall be considered as hereby forgiven and condoned and in case hereafter either shall commence or prosecute any proceedings against the other in respect of any cause or complaint which may thereafter arise. No offence or misconduct which has been committed or permitted before the execution of these presents and no act, deed, neglect or default of either party in relation to any such offence or misconduct shall be pleaded or alleged by either party or be admissible in evidence." The respondent resisted the motion on the ground that a *Rose* v. *Rose* clause was contrary to public policy.

Lord MERRIVALE, P., in giving judgment said, that the deed created what might be called a charter of oblivion and indemnity. Under it the parties lived apart and in August last the wife filed her petition. The respondent delivered an answer denying adultery and alleging adultery of the petitioner in August and September, 1929. It had been agreed that the convenient way of trying the question, not whether there was any substance in the charges of one or the other, but whether in face of the deed of 1929, the husband could be permitted to raise the allegations in his answer, was by motion to strike out the paragraphs on the ground of estoppel. The real question was whether the clause was a valid clause, that was, assuming that their intentions were honest, was it binding on the parties? The petitioner submitted that it was. The respondent submitted that an agreement in the form in question was void as being against public policy. That the jurisdiction of the court in these matters affected not only the rights of suitors and their status, but involved also questions of public policy arising from the exercise of the discretion with which the court was vested. His Lordship referred to *Rowley* v. *Rowley* (1864), 1 Sc. and D. 63; *Rose* v. *Rose* (1882), 7 P.D. 225 (1883), 8 P.D. 98, C.A., and *Hyman* v. *Hyman* [1929] A.C. 601. It was said that in *Hyman's Case* (*supra*) the House of Lords had held that where a statute invested a wife with power, after divorce, to apply for maintenance, an agreement between husband and wife in anticipation of such a state of things did not destroy the power of the wife to make the application. That the court had dealt with the right of the wife to be maintained is a matter of public concern. That decision no doubt, did give some ground for considering the relation of husband and wife as involving other considerations than those of the intentions of the parties. His Lordship here referred to the proviso to sub-s. (3) of s. 178 of the Judicature (Consolidation) Act, 1925. It was said that the "discretionary grounds" afforded reasons why it ought to be held that the allegations in the answer ought to stand on the record, the public interest requiring that there should be a complete disclosure. He (his Lordship) could not help thinking that in the background of the present motion had been a thought of the development of the practice of the court in exercising discretion. That, so far as he knew, was the extreme length to which public duty had gone. No citizen was bound to become a suitor for divorce. The question was whether one who had become a party to divorce proceedings had laid on him a duty which would make this deed unlawful—there was no need to invoke public policy—The real test was what was lawful and what was not. The only ground for holding the deed void would be that it was in fact a scheme for deceiving the court. There was no such suggestion in the case. Had there been, it would have been simple to take steps to cancel the deed. No such steps had been taken. The motion accordingly succeeded, and the husband's allegations against the wife must be struck out.

COUNSEL: *Sir Patrick Hastings*, K.C., and *Hon. Victor Russell*, for the petitioner; *Norman Birkett*, K.C., and *T. Bucknill*, for the respondent.

SOLICITORS: *Withers and Co.*; *Bird and Bird.*

N.B.—On 12th February, the Court of Appeal granted leave to appeal.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

# Societies.

## Sheffield District Incorporated Law Society.

ANNUAL GENERAL MEETING.

The fifty-sixth annual general meeting of the Society was held at The Law Society's Hall, Campo-lane, Sheffield, on Friday, the 27th February. The following were present: Colonel Charles Hodgkinson (Barnsley), President, in the chair, Sir William Hart (Vice-President) and Mr. R. T. Wilson (Hon. Treasurer), also Messrs. C. R. Arksey, Henry Auty, E. G. Bagshawe, Jonathan Barber, Claude Barker, E. A. Barker, Edward Bramley, S. H. Clay, E. W. Clegg, J. R. Cort, F. B. Dingle, C. A. Elliott, R. Hargreaves, Philip Howe, W. C. Linay, F. Ludlam, R. Meeke, P. J. Menneer, Arthur Neal, Charles Padley, F. W. Scorah, W. B. Siddons, A. D. Slater, A. H. Styring, R. G. Thompson, H. R. Vickers, T. H. Warskett, J. B. Wheat, J. B. Wheatcroft, C. R. Wilson, J. E. Wing, W. B. Willis (Rotherham), and C. Stanley Coombe (Hon. Secretary).

The fifty-sixth annual report presented by the Committee was received, confirmed and adopted, and the accounts of the Hon. Treasurer for the past year, as audited by the Society's professional auditors, were approved and passed.

The President, in moving the report, referred to the legislation affecting solicitors now before Parliament. Two Bills had been introduced into the Commons, the one attempting to lay down rules for the conduct of a solicitor's business to be imposed on all solicitors, with the idea of preventing the frauds of a few, and the other conferring greater powers upon The Law Society that it may be enabled to discipline its own members with the same object, but in its own way.

The President said that these bills would engage the close attention of the profession during the coming year.

He also referred to the work of the Poor Persons Committee of The Law Society, which had dealt with over 100 cases in the High Court during the past year. This was in addition to the work of the Poor Man's Lawyer Committee referred to in the Report.

Lastly, he commended to members the scheme established by The Law Society under which all solicitor's clerks might become members of the Society's Pension Fund for Clerks, and thereby at small cost provide substantial pensions for themselves at a retiring age.

Mr. Edward Bramley gave a short summary of the financial position with regard to the Society's new building in Campo-lane which was very satisfactory.

A resolution was passed expressing the cordial thanks of the Society to Colonel Charles Hodgkinson, the President, and appreciation of the ability with which he had filled the office and the consideration he had given to his duties during the past year.

A resolution was also passed expressing the best thanks of the Society to the Hon. Treasurer, Mr. R. T. Wilson, for his services during the past year.

On the proposal of Colonel Charles Hodgkinson, seconded by Mr. E. Bramley, Sir William E. Hart was unanimously elected to be President of the Society for the ensuing year.

The following gentlemen were elected officers for the ensuing year: Vice-President, Mr. Henry Reed; Hon.

Treasurer, Mr. R. T. Wilson; Joint Hon. Secretaries, Mr. C. S. Coombe and Mr. E. A. Barker. Committee: Messrs. Jonathan Barber, E. A. Barker, E. W. Clegg, C. A. Elliott, F. B. Dingle, R. B. Grayson, Charles Hodgkinson, Philip Howe, P. J. Menneer, W. Irwin Mitchell, T. C. Nicholson (Wath), Charles Padley, A. Pickles (Rotherham), Victor H. Sandford, W. B. Siddons, W. Mackenzie Smith, Allan H. Styring, H. R. Vickers, J. E. Wing, J. J. Baldwin Young (and a member to be nominated by the Barnsley Law Society).

## United Law Society.

A meeting of the United Law Society was held in the Middle Temple Common Room on Monday, 2nd March, Mr. Wentworth Pritchard in the chair. Mr. J. L. Stevens proposed "That this House would welcome Sunday entertainments for the benefit of charities." Mr. A. O. Hughes opposed, and there also spoke Messrs. Palmer, Levy, Shelford, Wood Smith, Roser (visitor), Pritchard, Bull and Oppenheim. The motion was carried by one vote.

A meeting of the United Law Society was held in the Middle Temple Common Room, on Monday, the 9th March, Mr. Wentworth Pritchard in the chair. Mr. C. T. R. Llewellyn moved:—"That the case of *Attorney-General* v. *Sharp* [1931] 1 Ch. D. 121, was wrongly decided." Mr. R. D. Wood opposed and there also spoke Messrs. Butcher, Pearce and Pritchard. The motion was lost by three votes.

## Law Association.

The usual monthly meeting of the Directors was held at The Law Society's Hall on Thursday, 5th March, Mr. C. D. Medley in the chair. The other Directors present were Messrs. E. B. V. Christian, G. D. Hugh-Jones, P. E. Marshall, C. F. Pridham, John Venning, Wm. Winterbotham, W. M. Woodhouse, and the Secretary (Mr. E. E. Barron). A sum of £160 was voted in relief of deserving applicants, and three new members were elected and other general business transacted.

## Society for Jewish Jurisprudence.

(English Branch.)

A meeting of the Society will be held at 5.15 p.m. on Thursday, the 19th March, in Lecture Room "A," King's Bench Walk, Inner Temple, when Mr. George Webber will read a paper on "Gulak's History of the Jewish Law of Property." All interested are invited to be present.

# Rules and Orders.

AT THE COURT AT BUCKINGHAM PALACE,

The 5th day of March, 1931.

Present,

The King's Most Excellent Majesty in Council.

Pursuant to section 5 of the County Courts Act, 1903, His Majesty is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:—

1. The Schedule to the County Courts Order in Council, 1924, shall be amended as follows:—

In Circuit 58, (*a*) Circuit No. 58 is removed from the first column of the said Schedule; (*b*) Exeter is removed from the second column thereof; and (*c*) Crediton and Okehampton are removed from the third column thereof.

2. This Order may be cited as the County Courts (Extended Jurisdiction) Order in Council, 1931, and shall come into operation on the first day of April, 1931, and the County Courts Order in Council, 1924, as amended, shall have effect as further amended by this Order.

*M. P. A. Hankey.*

## THE SOLICITORS BILL.

No steps appear to have been taken so far to resume the debate on the second reading of the Solicitors Bill which was adjourned on 20th February.

So far as we are aware, the Select Committee, which was to be appointed to consider the Solicitors (Clients' Accounts) Bill and to which the Solicitors Bill was also to be committed, has not yet been appointed. It would be most unfortunate if the former Bill should be considered by itself.



# Legal Notes and News.

## Honours and Appointments.

Mr. Emrys Evans, M.A., LL.B. Cantab., LL.B. London, solicitor, Town Clerk of Stoke Newington, has been appointed Town Clerk of the County Borough of Wallasey.

Mr. C. Kent Wright, B.A. Oxon, solicitor, Deputy Town Clerk of Hampstead, has been appointed Town Clerk and Solicitor of Stoke Newington.

Mr. John Hutton, solicitor, of Manchester, has been appointed Deputy Town Clerk of Birkenhead.

Mr. John Conchar, LL.B. London, solicitor, of Bradford, has been elected President of the Bradford Incorporated Law Society for the ensuing year.

## Wills and Bequests.

Mr. Thomas D. Laurance, of Onslow-square, Kensington, W., Assistant Registrar of the Court of Criminal Appeal, left £2,295, with net personalty £1,965.

Mr. Richard Herbert Bentley, solicitor of Fortis Green-road, N.2, who died on 12th January, aged seventy-two, left estate of the gross value of £6,979, with net personalty £6,891. He left £300 to his "faithful friend and clerk" Henry Ward, having to some extent already provided for him; £50 to his "dear old nurse," Elizabeth Bowyer; £50 to Jessie Robey, "in grateful remembrance of her devoted attention to my mother"; £100 to his "good friend and clerk," Frederick Pocock; and £50 to his clerk Walter Stevens, if in his service or that of his partner at his death. One-half of the residue of the property, subject to a life interest, to Treloar's Home and College for Cripples and the Boy Scouts Association, for promoting the interests of scouting in the North London district.

Mr. Arnold Austin (seventy-seven), solicitor, of Maida Vale, W., formerly of Clement's Inn, left £11,651, with net personalty £11,568.

Mr. William St. John Francis-Williams, of Penarth Glamorgan, barrister-at-law, the Cardiff stipendiary magistrate left £24,898, with net personalty £23,590.

Mr. Thomas Bury, solicitor, of Wrexham, Denbigh, left £20,335, with net personalty £18,222.

Mr. Edward P. Cross, solicitor, of Harrogate, left £17,527, with net personalty £12,728.

Mr. Robert Leader, barrister-at-law, of Sheffield, left £67,668, with net personalty £57,421.

Probate has now been granted of the will (made twenty-seven years ago) of the Earl of Birkenhead, who died on 30th September last, leaving estate of the gross value of £63,223, with net personalty £10,459.

### COUNTY COURT JUDGE'S RESIGNATION.

His Honour Judge Thomas, Senior Judge of the Liverpool County Court District (Circuit No. 6), which includes the County Courts of Southport, Ormskirk, Wigan, St. Helens, and Widnes, has resigned his position on account of ill-health. Judge Thomas was appointed in 1907 in succession to the late Judge Collier.

### THE AUCTIONEERS' AND ESTATE AGENTS' INSTITUTE OF THE UNITED KINGDOM.

PRELIMINARY EXAMINATION.

The results of the Preliminary Examination last January are just issued, and of the 358 candidates who sat for examination, 213 were successful. Mr. Charles Vessey Edis, 37, Risingholme-road, Wealdstone, Middlesex, was placed first in order of merit, thereby gaining the Institute Prize of books to the value of five guineas.

### CERTIFIED ACCOUNTANTS.

The next examinations of the London Association of Accountants will be held on 2nd, 3rd and 4th June, in London, Glasgow, Edinburgh, Newcastle, Birmingham, Belfast, Cork, Dublin, Leeds, Sheffield, Manchester, Liverpool, Cardiff, Bristol, Nottingham, Hull and Plymouth. Women are eligible under the Association's regulations to qualify as certified accountants upon the same terms and conditions as are applicable to men. Particulars and forms are obtainable at the office of the Association, 50, Bedford-square, London, W.C.1.

## Court Papers.

### Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

| DATE | EMERGENCY ROTA | APPEAL COURT No. 1. | GROUP I. Mr. JUSTICE EVE. Witness. Part I. | Mr. JUSTICE MAUGHAM. Non-Witness |
|---|---|---|---|---|
| M'nd'y Mar. 16 | Mr. Ritchie | Mr. Hicks Beach | Mr. Hicks Beach | Mr. More |
| Tuesday .. 17 | Andrews | Blaker | *Andrews | Hicks Beach |
| Wednesday. 18 | Jolly | More | More | Andrews |
| Thursday . 19 | Hicks Beach | Ritchie | *Hicks Beach | More |
| Friday .... 20 | Blaker | Andrews | Andrews | Hicks Beach |
| Saturday .. 21 | More | Jolly | More | Andrews |

| DATE | GROUP I. Mr. JUSTICE BENNETT. Witness. Part II. | Mr. JUSTICE CLAUSON. Non-Witness. | GROUP II. Mr. JUSTICE LUXMOORE. Witness. Part II. | Mr. JUSTICE FARWELL. Witness. Part I. |
|---|---|---|---|---|
| M'nd'y Mar. 16 | Mr.*Andrews | Mr. Jolly | Mr.*Blaker | Mr.*Ritchie |
| Tuesday .. 17 | *More | Ritchie | *Jolly | Blaker |
| Wednesday 18 | *Hicks Beach | Blaker | *Ritchie | *Jolly |
| Thursday . 19 | Andrews | Jolly | Blaker | Ritchie |
| Friday .... 20 | *More | Ritchie | Jolly | *Blaker |
| Saturday .. 21 | Hicks Beach | Blaker | Ritchie | Jolly |

*The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

The EASTER VACATION will commence on Friday, the 3rd day of April, 1931, and terminate on Tuesday, the 7th day of April, 1931, inclusive.



## Stock Exchange Prices of certain Trustee Securities.

Bank Rate (1st May 1930) 3%. Next London Stock Exchange Settlement Thursday, 19th March, 1931.

| | Middle Price 11 Mar. 1931. | Flat Interest Yield. £ s. d. | Approximate Yield with redemption £ s. d. |
|---|---|---|---|
| **English Government Securities.** | | | |
| Consols 4% 1957 or after | 89½ | 4 9 5 | — |
| Consols 2½% | 57xd | 4 7 9 | — |
| War Loan 5% 1929-47 | 104 | 4 16 1 | — |
| War Loan 4½% 1925-45 | 100 | 4 10 0 | 4 10 0 |
| Funding 4% Loan 1960-90 | 93 | 4 6 0 | 4 6 6 |
| Victory 4% Loan (Available for Estate Duty at par) Average life 35 years | 94½ | 4 4 8 | 4 6 0 |
| Conversion 5% Loan 1944-64 | 106 | 4 14 4 | 4 13 0 |
| Conversion 4½% Loan 1940-44 | 100½ | 4 9 7 | 3 19 0 |
| Conversion 3½% Loan 1961 | 79 | 4 8 7 | — |
| Local Loans 3% Stock 1912 or after | 66xd | 4 10 11 | — |
| Bank Stock | 267½ | 4 9 9 | — |
| India 4½% 1950-55 | 83 | 5 8 5 | 5 16 0 |
| India 3½% | 61½xd | 5 13 10 | — |
| India 3% | 52½xd | 5 14 3 | — |
| Sudan 4½% 1939-73 | 99 | 4 10 11 | 4 11 0 |
| Sudan 4% 1974 | 90 | 4 8 11 | 4 11 6 |
| Transvaal Government 3% 1923-53 (Guaranteed by Brit. Govt. Estimated life 15 yrs.) | 86½ | 3 9 4 | 3 18 0 |
| **Colonial Securities.** | | | |
| Canada 3% 1938 | 91 | 3 5 11 | 4 8 6 |
| Cape of Good Hope 4% 1916-36 | 97 | 4 2 6 | 4 11 6 |
| Cape of Good Hope 3½% 1929-49 | 84 | 4 3 4 | 4 16 6 |
| Ceylon 5% 1960-70 | 102 | 4 18 0 | 4 17 6 |
| *Commonwealth of Australia 5% 1945-75 | 75½ | 6 12 5 | 6 14 6 |
| Gold Coast 4½% 1956 | 99 | 4 10 11 | 4 11 4 |
| Jamaica 4½% 1941-71 | 99 | 4 10 11 | 4 11 0 |
| Natal 4% 1937 | 95 | 4 4 3 | 4 19 0 |
| *New South Wales 4½% 1935-1945 | 62 | 7 5 2 | 9 17 6 |
| *New South Wales 5% 1945-65 | 63 | 7 18 8 | 8 19 9 |
| New Zealand 4½% 1945 | 93½ | 4 16 3 | 5 3 3 |
| New Zealand 5% 1946 | 99½ | 5 0 6 | 5 1 0 |
| Nigeria 5% 1950-60 | 103 | 4 17 1 | 4 16 0 |
| *Queensland 5% 1940-60 | 70xd | 7 2 10 | 8 3 0 |
| South Africa 5% 1945-75 | 102 | 4 18 0 | 4 17 9 |
| *South Australia 5% 1945-75 | 70 | 7 2 10 | 7 16 3 |
| *Tasmania 5% 1945-75 | 71 | 7 0 10 | 7 3 0 |
| *Victoria 5% 1945-75 | 70 | 7 2 10 | 7 16 3 |
| *West Australia 5% 1945-75 | 70 | 7 2 10 | 7 16 3 |
| **Corporation Stocks.** | | | |
| Birmingham 3% on or after 1947 or at option of Corporation | 66 | 4 10 11 | — |
| Birmingham 5% 1946-56 | 103xd | 4 17 1 | 4 16 0 |
| Cardiff 5% 1945-65 | 100 | 5 0 0 | 5 0 0 |
| Croydon 3% 1940-60 | 75xd | 4 0 0 | 4 11 0 |
| Hastings 5% 1947-67 | 102xd | 4 18 0 | 4 17 6 |
| Hull 3½% 1925-55 | 82 | 4 5 4 | — |
| Liverpool 3½% Redeemable by agreement with holders or by purchase | 75xd | 4 13 4 | — |
| London City 2½% Consolidated Stock after 1920 at option of Corporation | 57 | 4 7 9 | — |
| London City 3% Consolidated Stock after 1920 at option of Corporation | 65 | 4 12 4 | — |
| Metropolitan Water Board 3% "A" 1963-2003 | 66xd | 4 9 7 | — |
| Do. do. 3% "B" 1934-2003 | 67 | 4 9 7 | — |
| Middlesex C.C. 3½% 1927-47 | 86 | 4 1 5 | 4 14 6 |
| Newcastle 3½% Irredeemable | 76 | 4 12 1 | — |
| Nottingham 3% Irredeemable | 66 | 4 10 11 | — |
| Stockton 5% 1946-66 | 103 | 4 17 1 | 4 16 6 |
| Wolverhampton 5% 1946-56 | 105 | 4 15 3 | 4 14 6 |
| **English Railway Prior Charges.** | | | |
| Gt. Western Rly. 4% Debenture | 83½ | 4 15 10 | — |
| Gt. Western Railway 5% Rent Charge | 100½ | 4 19 6 | — |
| Gt. Western Rly. 5% Preference | 93xd | 5 7 6 | — |
| L. & N.E. Rly. 4% Debenture | 76½ | 5 4 7 | — |
| L. & N.E. Rly. 4% 1st Guaranteed | 72 | 5 11 1 | — |
| L. & N.E. Rly. 4% 1st Preference | 54 | 7 8 2 | — |
| L. Mid. & Scot. Rly. 4% Debenture | 78½ | 5 1 11 | — |
| L. Mid. & Scot. Rly. 4% Guaranteed | 74xd | 5 8 1 | — |
| L. Mid. & Scot. Rly. 4% Preference | 53xd | 7 10 11 | — |
| Southern Railway 4% Debenture | 80½ | 4 19 5 | — |
| Southern Railway 5% Guaranteed | 98½xd | 5 1 6 | — |
| Southern Railway 5% Preference | 88½xd | 5 13 0 | — |

*The prices of Australian stocks are nominal—dealings being now usually a matter of negotiation.